#### CALIFORNIA COASTAL COMMISSION

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



W18a

# A-3-SCO-23-0003 (CAUWELS SLOPE STABILIZATION) MARCH 8, 2023 HEARING EXHIBITS

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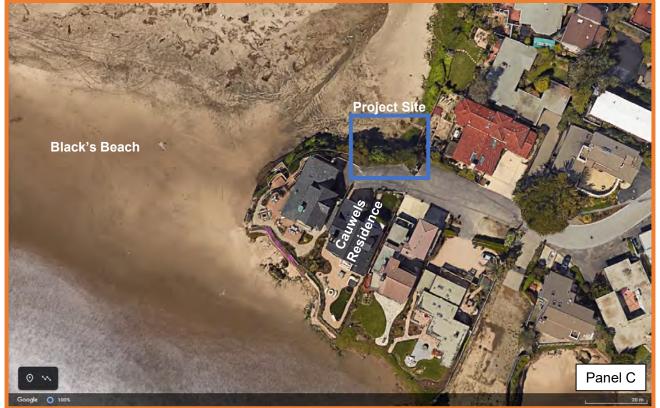
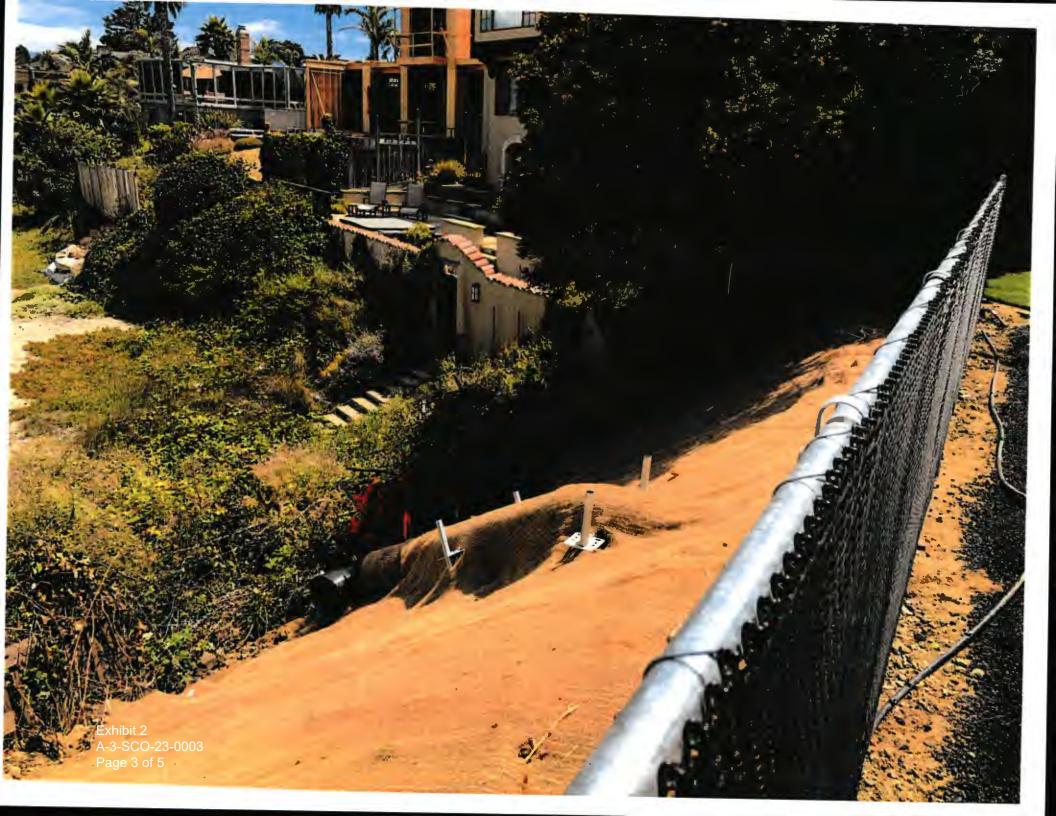
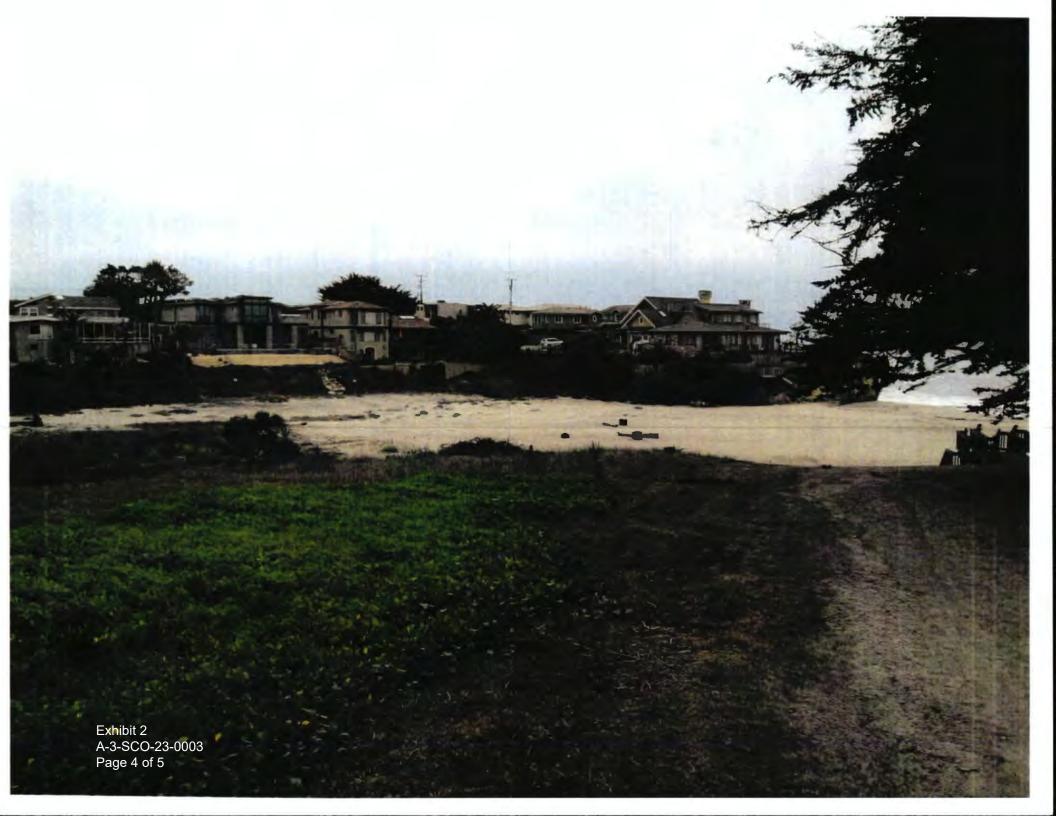


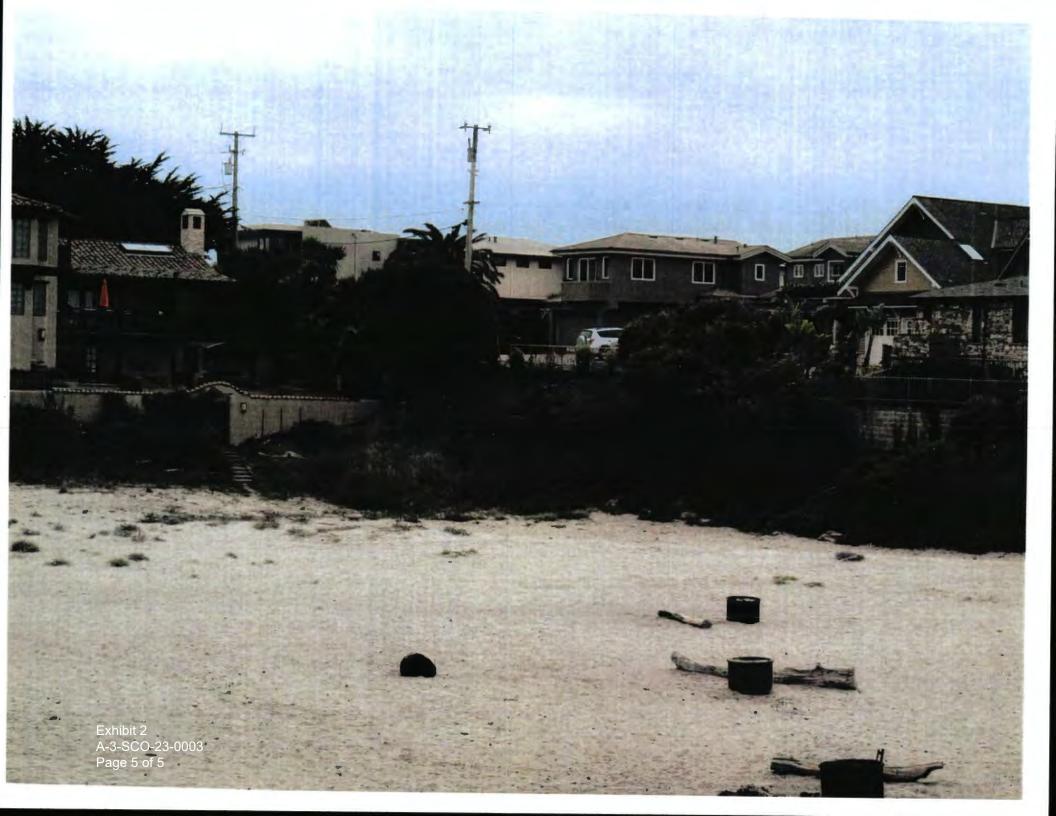
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#### NOTICE OF FINAL LOCAL ACTION ON COASTAL PERMIT

### **County of Santa Cruz**

RECEIVED

Date of Notice: 12/29/22

JAN 04 2023

Notice Sent (via certified mail) to: California Coastal Commission Central Coast Area Office 725 Front Street, Ste. 300 Santa Cruz, CA 95060

CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA FINAL LOCAL ACTION NOTICE

REFERENCE # 3-900-23-0008

APPEAL PERIOD 1/5-1/19/23

Please note the following **Final Santa Cruz County Action** on a coastal permit, coastal permit amendment or coastal permit extension application (all local appeals have been exhausted for this matter):

#### **Project Information**

Application No.: 201302

Project Planner: Nathan MacBeth

Project Applicant: Mark & Suzanne Cauwels Address: PO Box 3705, Merced CA 95344 Phone/E-mail: nathan.macbeth@santacruzcounty.us

Phone/E-mail: (209) 233-1800

Applicant's Representative: Hamilton Land Planning, Deidre Hamilton

Address: 343 Soquel Drive #155, Santa Cruz, CA 95062

Phone/E-mail: deidre@hamiltonlandplanning.com

Project Location: project located on the southwest end of Geoffroy Drive approximately 350 feet south west of the

intersection with 16th Ave (70 Geoffroy Drive).

Project Description: Proposal to recognize repair or a slump slide authorized under Emergency Coastal Development

Permit 20227 by constructing a reinforced fill slope.

#### **Final Action Information**

Final Local Action: Approved with Conditions

Final Action Body:

Administrative Approval
Zoning Administrator

Required Materials Supporting the Final Action	Enclosed	Previously sent (date)
Staff Report	X	
Adopted Findings	X	
Adopted Conditions	X	
Site Plans	X	
Elevations	N/A	

☑ Planning Commission☑ Board of Supervisors

Additional Materials Supporting the First Action	Enclosed	Previously sent (date)
CEQA Document	X	
Geotechnical Reports		
Biotic Reports		
Other: PC MINUTES	×	
Other:		

#### **Coastal Commission Appeal Information**

Ш	This Final Action is Not Appealable to the	California Coastal Commission	, the Final Count	ty of Santa Cruz Action is now e	пестіче.
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This Final Action is appealable to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this Final Action. The Final Action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission Central Coast Area Office in Santa Cruz; there is no fee for such an appeal. Should you have any questions regarding the Coastal Commission appeal period or process, please contact the Central Coast Area Office at the address listed above, or by phone at (831) 427-4863.

Copies of this notice have also been sent via first-class mail to:

- Applicant
- Interested parties who requested mailing of notice

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#### County of Santa Cruz Planning Commission Minutes

Planning Department, 701 Ocean Street, Suite 400, Santa Cruz, CA 95060

Meeting Date: Wednesday, December, 14, 2022 9:30 AM

Location: Virtual Public Hearing

#### **REGULAR AGENDA ITEMS**

1. Roll Call

Commissioners present: Chair Tim Gordin, Vice-Chair Rachel Dann, Commissioner Judith Lazenby, Commissioner Renee Shepherd, Commissioner Allyson Violante

- 2. Additions and Corrections to Agenda
- 3. Declaration of Ex Parte Communications
- 4. Oral Communications

#### **CONSENT ITEMS**

#### 5. AB361 Resolution

To approve a Resolution to continue virtual Planning Commission meetings in accordance with AB 361 and amended Government Code Section 54953.

ACTION: Approve the Resolution as prepared by staff.

MOTION/SECOND: Dann/ Violante AYES: Gordin, Lazenby, Shepherd

NOES: None ABSTAIN: None ABSENT: None

#### **SCHEDULED ITEMS**

#### 6. Approval of Minutes

To approve the minutes of the November 9, 2022 Planning Commission meeting as submitted by the Planning Staff.

ACTION: Approve the minutes as prepared by staff.

MOTION/SECOND: Dann/ Gordin

AYES: Shepherd, Violante, Gordin, and Dann

NOES: None ABSTAIN: Lazenby ABSENT: None

APN's: 028-143-35

Referred by the Zoning Administrator to consider a proposal to recognize repair of a slump slide authorized under Emergency Coastal Development Permit 201227 by constructing a reinforced fill slope. Requires a Coastal Development Permit and a determination that the proposal is exempt from further review under the California Environmental Quality Act (CEQA).

Project located at the south-west end of Geoffroy Drive approximately (70 Geoffroy Drive) 350 feet south-west of the intersection with 16th Avenue in the Live Oak Planning Area.

APPLICANT: Hamilton Land Planning OWNER: Mark and Suzanne Cauwels SUPERVISORAL DISTRICT: 1

PROJECT PLANNER: Nathan MacBeth, (831) 454-3118

EMAIL: Nathan.MacBeth@santacruzcounty.us

ACTION: Approve proposed slump slide repair. Amend project description as appropriate to omit the four-foot high fence at the top of the bluff. Applicant may return at a later date with a revised fence or barrier design if desired.

Adopt revised CEQA determination (Exhibit 1A) and find that the project is exempt from further environmental review under the California Environmental Quality Act (Emergency Project) an Approve application 201302 as revised by staff with revised Findings (Exhibit 1B).

MOTION/SECOND: Violante/ Shepherd AYES: Gordin, Lazenby, Shepherd, Violante

NOES: Dann ABSTAIN: None ABSENT: None

8. 211211

6201 Soquel Drive, Aptos, 95003

APN's: 037-141-60

Proposal to divide an existing 35,800 square foot parcel developed with a nine-unit dwelling group into two parcels of approximately 15,600 and 21,200 square feet respectively. Results in two RM-3 (Multifamily) zoned parcels containing a three and six-unit dwelling group. Project requires a Minor Land Division, a Roadway/ Roadside Exception, a Residential Development Permit, and a determination that the project is exempt from further review under the California Environmental Quality Act (CEQA).

Property located on the north-east side of the intersection of Soquel Drive and Merrill Road (6201 Soquel Drive).

APPLICANT: Swift Consulting OWNER: Michael Wade

SUPERVISORAL DISTRICT: 2

PROJECT PLANNER: Nathan MacBeth, (831) 454-3118

EMAIL: Nathan.MacBeth@santacruzcounty.us

ACTION: Approve project as proposed by staff with amended language to the staff report. Findings from page 9 shall be amended to read "along the north side of the interior driveway". Conditions of approval on page 16 shall be changed to read, "Soquel Creek Water District". A Typo on page 17 shall be fixed to read, "Where feasible, all improvements adjacent to or affecting a County Road."

MOTION/SECOND: Violante/ Dann AYES: Lazenby, Gordin, Dann, Violante

NOES: None ABSTAIN: None ABSENT: Shepherd

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#### 9. County Council's Report

No Report.

#### 10. Report on Upcoming Meeting Dates and Agendas

December 28, 2022 Planning Commission meeting will be canceled. Planning Commission meetings for January 11, 2023 and January 25, 2023 will be held.

#### 11. County Counsel's Report

No report.

#### APPEAL INFORMATION

Denial or approval of any permit by the Planning Commission is appealable to the Board of Supervisors. The appeal must be filed with the required appeal fee within 14 calendar days of action by the Planning Commission. To file an appeal you must write a letter to the Board of Supervisors and include the appeal fee. For more information on appeals, please see the "Planning Appeals" brochure located in the Planning Department lobby, or contact the project planner.

#### APPEALS OF COASTAL PROJECTS

- (\*) This project requires a Coastal Zone Permit which is not appealable to the California Coastal Commission. It may be appealed to the Board of Supervisors; the appeal must be filed within 14 calendar days of action by the Planning Commission.
- (\*\*) This project requires a Coastal Development Permit. Denial or approval of the Coastal Development Permit is appealable to the Board of Supervisors; the appeal must be filed within 14 calendar days of action by the Planning Commission. After all local appeal periods have ended (grounds for appeal are listed in the County Code Section 13.20.110), approval of a Coastal Development permit is appealable to the California Coastal Commission. The appeal must be filed with the Coastal Commission within 10 business days of receipt by the Coastal Commission of notice of final local action.

**Note regarding Public hearing items:** If any person challenges an action taken on the foregoing matter(s) in court, they may be limited to raising only those issues raised at the public hearing described in this notice or in written correspondence delivered to the Planning Commission at or prior to the public hearing.

Agenda documents may be reviewed at the Planning Department, Room 420, County Government Center, 701 Ocean Street, Santa Cruz.

The County of Santa Cruz does not discriminate on the basis of disability, and no person shall, by reason of a disability, be denied the benefits of its services, programs, or activities. The Board of Supervisors chambers is located in an accessible facility. If you wish to attend this meeting and you will require special assistance in order to participate, please contact the ADA Coordinator at 454-3137 (TDD/TTY number is 711) at least 72 hours in advance of the meeting to make arrangements. As a courtesy to those persons affected, please attend the meeting smoke and scent free.



### **County of Santa Cruz**

#### DEPARTMENT OF COMMUNITY DEVELOPMENT AND INFRASTRUCTURE

701 OCEAN STREET, FOURTH FLOOR, SANTA CRUZ, CA 95060-4070 Planning (831) 454-2580 Public Works (831) 454-2160

Matt Machado, Deputy CAO, Director of Community Development and Infrastructure

Carolyn Burke Assistant Director Unified Permit Center Stephanie Hansen Assistant Director Housing & Policy Kent Edler
Assistant Director
Special Projects

Steve Wiesner
Assistant Director
Transportation

Travis Cary
Director
Capital Projects

Kim Moore Assistant Director Administration

December 1, 2022

Agenda Date: December 14, 2022

Planning Commission County of Santa Cruz 701 Ocean Street Santa Cruz, CA 95060

Subject: Public hearing to consider Referral by the Zoning Administrator regarding Application 201302 for a Coastal Development Permit for a proposed slump slide repair at 70 Geoffroy Drive, Santa Cruz

Members of the Commission:

On September 21, 2020, Application 201302 for a Coastal Development Permit to recognize installation of a slope stability (slum slide) repair, authorized under Emergency Coastal Development Permit 201227, was filed with the County of Santa Cruz Planning Department. The project is located at the northwest portion of the property located at 70 Geoffroy Drive in Santa Cruz.

On October 21, 2022, the Zoning Administrator, after a duly noticed hearing, referred Application 201302 to the Planning Commission for additional consideration. In summary, the Zoning Administrator's direction was as follows:

General Plan/Local Coastal Plan (LCP) policies refer to the maintenance of coastal access points in the vicinity of Geoffroy Drive. Presently, public access exists approximately 200 feet to the east of the project site on Geoffroy Drive. Further, the LCP indicates that vista points or overlooks are encouraged at the end of Geoffroy Drive; however, the LCP does not indicate where such an overlook should be developed, nor does it make any distinction between the public and private portions of Geoffroy Drive. The LCP also indicates that, generally, facilities for public access to beaches is encouraged via acquisition of land donation or trail easement. Staff shall clarify whether the LCP policies regarding public access have any bearing on the subject application (bluff repair) at 70 Geoffroy Drive, in other words, is the County precluded from acting on the bluff repair project at this time.

Staff has reviewed the applicable LCP policies cited by the Zoning Administrator and continues to support a determination that the proposed slump slide repair, and restoration of the project site to is pre-existing condition, does not rise to the level of requiring further analysis as to whether

there is a public right of access over the subject property. Further, the scope of work does not include or require the establishment or construction of any coastal access improvements. The staff report to the Zoning Administrator on October 21, 2022 (Exhibit 1E), adequately states:

The project scope does not include the establishment and construction of a public access on the subject parcel and there is no nexus in County Code to require such access at this time as the project scope entails repair of a bluff failure only; however, the resulting site conditions will preserve the integrity of the slope in the event development of a coastal access point is considered at this location in the future.

As previously stated, the scope of work entailed in the subject application, a slump slide repair authorized under Emergency Coastal Development Permit 201302, does not trigger a requirement for public access, and as such there is no need to analyze whether there is a public right of access over the subject parcel.

In response to public comment and correspondence received from the Coastal Commission, the applicant submitted a quiet title judgement that determined that there is no public easement of access on the subject parcel at this time; however, though the quiet title judgment addresses the public's right of access over the subject parcel, that judgment is not relevant to this application for the reasons stated above.

#### **Staff Recommendation**

Based on the review of the issues being Referred, the staff recommendation is that the Planning Commission take the following actions:

- 1. Determine that the project is exempt from further environmental review under the California Environmental Quality Act (CEQA) in that the project qualifies for Class 1 and Class 3 Categorical Exceptions;
- 2. Approve application 201302 based on the Findings for Approval found in the attached Exhibit 1B.

Should you have further questions concerning this application, please contact me at: (831) 454-3118 or e-mail: nathan.macbeth@santacruzcounty.us

Sincerely.

Nathan MacBeth

Project Planner

Development Review

Nathan MacBeth

#### Exhibits:

- 1A. CEQA Determination
- 1B. Findings for Approval
- 1C. Conditions of Approval
- 1D. Staff Report form 10/21/22 Zoning Administrator Hearing
- 1E. Minutes from 10/21/22 Zoning Administrator Hearing
- 1F. Comments & Correspondence

## CALIFORNIA ENVIRONMENTAL QUALITY ACT NOTICE OF EXEMPTION

The Santa Cruz County Planning Department has reviewed the project described below and has determined that it is exempt from the provisions of CEQA as specified in Sections 15061 - 15332 of CEQA for the reason(s) which have been specified in this document.

Application Number: 201302 Assessor Parcel Number: 028-143-35 Project Location: 70 Geoffroy Drive, Santa Cruz
Project Description: Proposal to recognize repair of a slope failure.
Person or Agency Proposing Project: Hamilton Land Planning Attn Deidre Hamilton
Contact Phone Number: (831) 423-9992
A The proposed activity is not a project under CEQA Guidelines Section 15378.  The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).
C. <u>Ministerial Project</u> involving only the use of fixed standards or objective measurements without personal judgment.
D. X Statutory Exemption other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).
Emergency Projects (CEQA Guidelines Section 15269)
E <u>Categorical Exemption</u>
F. Reasons why the project is exempt:
In the winter of 2019 - 2020, heavy rains caused a slope failure of a 10-foot high portion of the slope supporting the driveway/ access to the homes located at 60 and 70 Geoffroy Drive. The failure was likely due to the clogging of an existing drain inlet near the top edge of the roadway. An Emergency Coastal Development Permit and Grading Permit (201227) was issued on 6/24/20 for the construction of a slump slide repair by constructing a temporary reinforced slope and installing a 12 inch diameter drainpipe. All work associated with the emergency repair was completed under the emergency Coastal Development and Grading permits. A determination that the project is exemp from CEQA was made at the time of the issuance of the Emergency Coastal Development/Grading permit under Section 15269 of the CEQA Guidelines.

Date: 12/14/22

Nathan MacBeth

Nathan MacBeth, Project Planner

#### **Coastal Development Permit Findings**

1. That the project is a use allowed in one of the basic zone districts that are listed in LCP Section 13.10.170(D) as consistent with the LCP Land Use Plan designation of the site.

This finding can be made, in that the property is zoned R-1-6 (Single family residential - 6,000 square feet), a designation which allows residential uses. The proposed slope failure repair is an allowed use within the zone district in that the slope stabilization is necessary to protect the existing access to homes and occupants from threat of life and safety, and the zoning is consistent with the site's R-UL (Urban Low Density Residential) General Plan designation.

The proposed slope failure repair is consistent with General Plan Policy 6.2.16 in that it is necessary to ensure the safety of the properties (including access) located at the top the bluff. Detailed technical studies have been reviewed and accepted which demonstrate the need for the proposed improvements. The project will not reduce or restrict beach access in that the site is not developed with an access now and repair of the slope failure will not change this condition; however, the resulting site conditions will be safer from further slope failure and preserve the integrity of the slope in the event development of a coastal access point is considered at this location in the future. The establishment of a future access point on the subject parcel is not precluded by the slope repair. Existing beach access is available along Geoffroy Drive approximately 750 feet east of the project site and public viewpoints are available within 200 feet to the east of the project site.

2. That the project does not conflict with any existing easement or development restrictions such as public access, utility, or open space easements.

This finding can be made, in that no such easements or restrictions are known to encumber the project site.

3. That the project is consistent with the design criteria and special use standards and conditions of this chapter pursuant to SCCC 13.20.130 and 13.20.140 et seq.

This finding can be made, in that the project is sited and designed to be visually compatible with the surrounding land uses and character of the neighborhood. The location of the slope repair will be readily visible from public viewsheds on Blacks Beach however the project site has been revegetated and will blend with the surrounding hill side. Consequently, the project would not result in an adverse impact to scenic resources. The development site is not on a prominent ridge or bluff top.

4. That the project conforms with the public access, recreation, and visitor-serving policies, standards and maps of the LCP Land Use Plan, including Chapter 2: Section 2.5 and Chapter 7.

This finding can be made, in that the slope repair will not result in adverse impacts to existing or future shoreline access. The project site is not specifically identified as a priority acquisition site in the County Local Coastal Program and public beach access is available at Sunny Cove (750 feet to the east) and Geoffroy Drive (170 feet to the southeast).

5. That the project conforms to all other applicable standards of the certified LCP.

This finding can be made, in that the structure is sited and designed to be visually compatible and integrated with the character of the surrounding neighborhood. Additionally, residential uses are allowed uses in the R-1-6 (Single family residential - 6,000 square feet) zone district, as well as the General Plan and Local Coastal Program land use designation. Developed parcels in the area contain single family dwellings. Size and architectural styles vary in the area, and the design submitted is consistent with the pattern of development within the surrounding neighborhood.

6. If the project is located between the nearest through public road and the sea or the shoreline of any body of water located within the Coastal Zone, that the project conforms to the public access and public recreation policies of Chapter 3 of the Coastal Act.

This finding can be made, in that the project site is located between the shoreline and the first through public road however, the slope repair will not interfere with public access to the beach, ocean, or any nearby body of water in that the County General Plan/ Local Coastal Program indicates there are a number of potential locations in the vicinity of the project that could be utilized as future shoreline access points containing trails, beach access, and or viewing points. The location of the project is not specifically called out as a priority acquisition site in the General Plan/ LCP. The project, as proposed would not be inconsistent with the County General Plan/LCP in that it does not preclude the creation of future coastal access.

#### **Development Permit Findings**

1. That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity.

This finding can be made, in that the project is located in an area designated for residential uses. Construction will comply with prevailing building technology, the California Building Code, and the County Building ordinance to ensure the optimum in safety and the conservation of energy and resources. The project has been conditioned to require recordation of a maintenance agreement to ensure long-term maintenance of the drainage improvements.

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

This finding can be made, in that the proposed location of the slope repair and the conditions under which it will be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the R-1-6 (Single Family Residential - 6,000 square foot minimum) zone district as the primary use of the property will continue to be residential. Installation of the slope stabilization measures are necessary to ensure safety of existing access to existing residential structures at the top of the bluff and residents in the vicinity.

3. That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.

This finding can be made, in that an Emergency Coastal Development Permit and Grading Permit (201227) was issued for the slope repair due to an imminent risk to health and safety. The project has been designed in accordance with General Plan Policy 6.2.10 (Site development to Minimize Hazards). A Geotechnical Report prepared by Haro, Kasunich, and associates dated April 6, 2021 and accepted by County staff on May 18, 2021 under application REV201113 (Exhibit G).

Further, this finding can be made, in that the proposed residential use is consistent with the use and density requirements specified for the R-UL (Urban Low Density Residential) land use designation in the County General Plan.

A specific plan has not been adopted for this portion of the County.

4. That the proposed use will not overload utilities, and will not generate more than the acceptable level of traffic on the streets in the vicinity.

This finding can be made, in that the construction of the slope repair is to be constructed on an existing developed lot intended to protect the access to existing homes and occupants from further erosion and potential hazard associated with the instability of the coastal bluff. Temporary construction is completed and will not require any further use of utilities and will not

Owner: Mark & Suzanne Cauwels

generate additional traffic on the streets in the vicinity.

5. That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood.

This finding can be made, in that the project is located along a coastal bluff which is subject to coastal erosion. The subject parcel is developed with existing single family dwelling and shared access to a neighboring residence. In terms of design, the project is consistent with the methods for which similar slope repairs have been performed. The proposed project has incorporated revegetation of the slope to further stabilize the project site. Application of black vinyl coating to the safety fencing will further soften any potential visual impact from the project. Removed by PC on 12/14/22

6. The proposed development project is consistent with the Design Standards and Guidelines (sections 13.11.070 through 13.11.076), and any other applicable requirements of this chapter.

This finding can be made, in that the proposed repair of slope failure will be of an appropriate scale and type of design that will enhance the aesthetic qualities of the surrounding properties and will not reduce or visually impact available open space in the surrounding area.

#### **Conditions of Approval**

Exhibit D: Project plans, prepared by Haro, Kasunich and Associates revised 4/19/21.

- I. This permit authorizes the construction of a slope failure repair as indicated on the approved Exhibit "D" for this permit. This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:
  - A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
  - B. Meet all requirements of the County Department of Public Works, Stormwater Management. Drainage fees will be assessed on the net increase in impervious area.
  - C. Meet all requirements of the Environmental Planning section of the Planning Department.
- II. All construction shall be performed according to the approved plans for the Grading Permit. Prior to final building inspection, the applicant/owner must meet the following conditions:
  - A. All site improvements shown on the final approved Grading Permit plans shall be installed.
  - B. Pursuant to Sections 16.40.040 and 16.42.080 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.080, shall be observed.

#### III. Operational Conditions

A. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.

#### IV. Indemnification

The applicant/owner shall indemnify, defend with counsel approved by the COUNTY, and hold harmless the COUNTY, its officers, employees, and agents

from and against any claim (including reasonable attorney's fees, expert fees, and all other costs and fees of litigation), against the COUNTY, its officers, employees, and agents arising out of or in connection to this development approval or any subsequent amendment of this development approval which is requested by the applicant/owner, regardless of the COUNTY's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the COUNTY. Should the COUNTY in its sole discretion find the applicant's/owner's legal counsel unacceptable, then the applicant/owner shall reimburse the COUNTY its costs of defense, including without limitation reasonable attorney's fees, expert fees, and all other costs and fees of litigation. The applicant/owner shall promptly pay any final judgment rendered against the COUNTY (and its officers, employees, and agents) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this development approval.

- A. The COUNTY shall promptly notify the applicant/owner of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. The COUNTY shall cooperate fully in such defense.
- B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:
  - 1. COUNTY bears its own attorney's fees and costs; and
  - 2. COUNTY defends the action in good faith.
- C. <u>Settlement</u>. The applicant/owner shall not be required to pay or perform any settlement unless such applicant/owner has approved the settlement. When representing the COUNTY, the applicant/owner shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the COUNTY.
- D. <u>Successors Bound</u>. The "applicant/owner" shall include the applicant and/or the owner and the successor'(s) in interest, transferee(s), and assign(s) of the applicant and/or the owner.

Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

Please note: This permit expires three years from the effective date listed below unless the conditions of approval are complied with and the use commences before the expiration date.

Owner: Mark & Suzanne Cauwels

Approval Date:	12-14-22	
Effective Date:	12-28-22	
Expiration Date:	12-28-25	

Appeals: Any property owner, or other person aggrieved, or any other person whose interests are adversely affected by any act or determination of the Zoning Administrator, may appeal the act or determination to the Planning Commission in accordance with chapter 18.10 of the Santa Cruz County Code.

### **Zoning Administrator Staff Report**

October 21, 2022

**Application Number 201302** 

**EXHIBIT 1D** 



# Staff Report to the Zoning Administrator

Application Number: 201302

**Applicant:** Hamilton Land Planning **Owner:** Mark & Suzanne Cauwels

Owner: Mark & Suzanne Cauwel:

**APN:** 028-143-35

**Site Address:** 70 Geoffroy Drive, Santa Cruz

Agenda Date: October 21, 2022

**Agenda Item #:** 3 **Time:** After 9:00 a.m.

**Project Description**: Proposal to recognize repair of a slump slide authorized under Emergency Coastal Development Permit 201227 by constructing a reinforced fill slope.

**Location**: Project located at the south west end of Geoffroy Drive approximately (70 Geoffroy Drive) 350 feet south west of the intersection with 16th Avenue in the Live Oak Planning Area.

Permits Required: Coastal Development Permit

Supervisorial District: First District (District Supervisor: Manu Koenig)

#### **Staff Recommendation:**

- Determine that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- Approval of Application 201302, based on the attached findings and conditions.

#### **Project Description & Setting**

This is a proposal to recognize a slump slope repair by constructing a reinforced slope fill and erosion control matting. Project includes installation of a 12-inch diameter above ground stormwater drain to convey stormwater from Geoffroy Drive to the base of the bluff and installation of a 42-inch high black vinyl coated chain link fence at the top edge of the coastal bluff to serve as a safety rail. Removed from project description by PC 12/14/22

The project is located at the end of Geoffroy Drive, just beyond the County-maintained portions of the roadway at the northwest side of a private driveway serving five homes. The portion of Geoffroy Drive that is privately maintained and containing the project, was gated in 2015 and access is currently limited to homeowners and emergency vehicles.

#### **Project Background**

In the winter of 2019 - 2020, heavy rains caused a slope failure of a 10 foot high portion of the slope supporting the driveway/ access to the homes located at 60 and 70 Geoffroy Drive. The

County of Santa Cruz Planning Department 701 Ocean Street, 4th Floor, Santa Cruz CA 95060

Owner: Mark & Suzanne Cauwels

failure was likely due to the clogging of an existing drain inlet near the top edge of the roadway. An Emergency Coastal Development Permit and Grading Permit (201227) was issued for the construction of a slump slide repair by constructing a temporary reinforced slope and installing a 12-inch diameter drain pipe. All work associated with the emergency repair was completed under the emergency Coastal Development and Grading permits. A Geotechnical (soils) Report was prepared by Haro, Kasunich, and Associates dated April 6, 2021 and submitted to the County for review under application REV201113. On May 18, 2021, County staff accepted the report.

County Code requires a "regular Coastal Development Permit" to be submitted following the issuance of an emergency Coastal Development Permit (CDP). The regular CDP is intended to address any changes and or long-term repairs as opposed to the minimum repair necessary to prevent or mitigate the conditions posing an imminent threat to life, health, property or essential public services. In this case, there are no changes from the Emergency CDP and the proposed regular CDP.

#### Zoning, General Plan and Local Coastal Program Consistency

The subject property is an approximately 17,600 square foot lot, located in the R-1-6 (Single family residential - 6,000 square feet) zone district, a designation which allows residential uses. The proposed slope failure repair is a permitted use within the zone district and the zoning is consistent with the site's R-UL (Urban Low Density Residential) General Plan designation.

The proposed repair of slope failure is in conformance with the County's certified Local Coastal Program, in that the project site has been designed to minimize impacts to coastal views. Installation of erosion control fabric to allow establishment of natural vegetation and installation of a black vinyl-coated chain link safety fence (rather than solid fencing) will ensure the site is visually compatible and integrated with the character of the surrounding neighborhood. Removed by PC 12/14/22

In a letter from Coastal Commission staff dated October 23, 2020 (Exhibit H), Coastal staff indicate there are a number of violations on the subject and surrounding properties which impede public access. These alleged violations stem from installation of the private gate at the end of the publicly maintained portions of Geoffroy Drive as well as installation of fencing which prohibits beach access at the project site. These violations were identified by the Coastal Commission, and not the County. The County has not issued any notices of violations related to the improvements that are the subject of this application.

Coastal staff further notes that the project is in an area that has historically been used as a public access point between Geoffroy Drive and Blacks Beach to the northwest. The County General Plan/ Local Coastal Program indicates there are several potential locations in the vicinity of the project site that could be utilized as future shoreline access points containing trails, beach access, and or viewing points. The location of the project is not specifically called out as a priority acquisition site in the General Plan/ LCP.

The current proposal is to recognize the installation of improvements which are intended to restore slope stability and provide adequate drainage of the project site. All the improvements contained in the proposed project have been installed in accordance with the recommendations of the project geotechnical engineer and subject to inspection by County staff. The project scope

Owner: Mark & Suzanne Cauwels

does not include the establishment and construction of a public access on the subject parcel and there is no nexus in County Code to require such access at this time as the project scope entails repair of a bluff failure only; however, the resulting site conditions will preserve the integrity of the slope in the event development of a coastal access point is considered at this location in the future. The project, as proposed, is not inconsistent with the County General Plan/LCP in that it does not preclude the creation of future coastal access.

#### Conclusion

As proposed and conditioned, the project is consistent with all applicable codes and policies of the Zoning Ordinance and General Plan/LCP. Please see Exhibit "B" ("Findings") for a complete listing of findings and evidence related to the above discussion.

#### **Staff Recommendation**

- Determine that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- APPROVAL of Application Number 201302, based on the attached findings and conditions.

Supplementary reports and information referred to in this report are on file and available for viewing at the Santa Cruz County Planning Department, and are hereby made a part of the administrative record for the proposed project.

The County Code and General Plan, as well as hearing agendas and additional information are available online at: <a href="www.sccoplanning.com">www.sccoplanning.com</a>

Report Prepared By: Nathan MacBeth

Santa Cruz County Planning Department

701 Ocean Street, 4th Floor Santa Cruz CA 95060

Phone Number: (831) 454-3118

E-mail: nathan.macbeth@santacruzcounty.us

#### **Exhibits**

- A. Categorical Exemption (CEQA determination)
- B. Findings
- C. Conditions
- D. Project plans & Site photos
- E. Assessor's, Location, Zoning and General Plan Maps
- F. Parcel information
- G. Report review letters
- H. Comments & Correspondence

## CALIFORNIA ENVIRONMENTAL QUALITY ACT NOTICE OF EXEMPTION

The Santa Cruz County Planning Department has reviewed the project described below and has determined that it is exempt from the provisions of CEQA as specified in Sections 15061 - 15332 of CEQA for the reason(s) which have been specified in this document.

Assessor Par	Number: 201302 cel Number: 028-143-35 cion: 70 Geoffroy Drive, Santa Cruz
Project Desc	ription: Proposal to recognize repair of a slope failure.
Person or A	gency Proposing Project: Hamilton Land Planning Attn Deidre Hamilton
Contact Pho	ne Number: (831) 423-9992
A B C D	The proposed activity is not a project under CEQA Guidelines Section 15378. The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).  Ministerial Project involving only the use of fixed standards or objective measurements without personal judgment.  Statutory Exemption other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).
E. <u>X</u>	Categorical Exemption
	Construction or Conversion of Small Structures (Section 15303) & Class 2 – lities (Section 15302).
F. Reaso	ns why the project is exempt:
	nstruction of a slope repair for access to existing single family residences in an area residential uses including repair/upgrade to existing drainage facilities.
In addition, no	one of the conditions described in Section 15300.2 apply to this project.
Nathan MacR	Date:eth, Project Planner
14athan MacD	

#### **Coastal Development Permit Findings**

1. That the project is a use allowed in one of the basic zone districts that are listed in LCP Section 13.10.170(D) as consistent with the LCP Land Use Plan designation of the site.

This finding can be made, in that the property is zoned R-1-6 (Single family residential - 6,000 square feet), a designation which allows residential uses. The proposed slope failure repair is an allowed use within the zone district in that the slope stabilization is necessary to protect the existing access to homes and occupants from threat of life and safety, and the zoning is consistent with the site's R-UL (Urban Low Density Residential) General Plan designation.

The proposed slope failure repair is consistent with General Plan Policy 6.2.16 in that it is necessary to ensure the safety of the properties (including access) located at the top the bluff. Detailed technical studies have been reviewed and accepted which demonstrate the need for the proposed improvements. The project will not reduce or restrict beach access in that the site is not developed with an access now and repair of the slope failure will not change this condition; however, the resulting site conditions will be safer from further slope failure and preserve the integrity of the slope in the event development of a coastal access point is considered at this location in the future. The establishment of a future access point on the subject parcel is not precluded by the slope repair. Existing beach access is available along Geoffroy Drive approximately 750 feet east of the project site and public viewpoints are available within 200 feet to the east of the project site.

2. That the project does not conflict with any existing easement or development restrictions such as public access, utility, or open space easements.

This finding can be made, in that no such easements or restrictions are known to encumber the project site.

3. That the project is consistent with the design criteria and special use standards and conditions of this chapter pursuant to SCCC 13.20.130 and 13.20.140 et seq.

This finding can be made, in that the project is sited and designed to be visually compatible with the surrounding land uses and character of the neighborhood. The location of the slope repair will be readily visible from public viewsheds on Blacks Beach however the project site has been revegetated and will blend with the surrounding hill side. Consequently, the project would not result in an adverse impact to scenic resources. The development site is not on a prominent ridge or bluff top.

4. That the project conforms with the public access, recreation, and visitor-serving policies, standards and maps of the LCP Land Use Plan, including Chapter 2: Section 2.5 and Chapter 7.

This finding can be made, in that the slope repair will not result in adverse impacts to existing or future shoreline access. The project site is not specifically identified as a priority acquisition site in the County Local Coastal Program and public beach access is available at Sunny Cove (750 feet to the east) and Geoffroy Drive (170 feet to the southeast).

Owner: Mark & Suzanne Cauwels

5. That the project conforms to all other applicable standards of the certified LCP.

This finding can be made, in that the structure is sited and designed to be visually compatible and integrated with the character of the surrounding neighborhood. Additionally, residential uses are allowed uses in the R-1-6 (Single family residential - 6,000 square feet) zone district, as well as the General Plan and Local Coastal Program land use designation. Developed parcels in the area contain single family dwellings. Size and architectural styles vary in the area, and the design submitted is consistent with the pattern of development within the surrounding neighborhood.

6. If the project is located between the nearest through public road and the sea or the shoreline of any body of water located within the Coastal Zone, that the project conforms to the public access and public recreation policies of Chapter 3 of the Coastal Act.

This finding can be made, in that the project site is located between the shoreline and the first through public road however, the slope repair will not interfere with public access to the beach, ocean, or any nearby body of water in that the County General Plan/ Local Coastal Program indicates there are a number of potential locations in the vicinity of the project that could be utilized as future shoreline access points containing trails, beach access, and or viewing points. The location of the project is not specifically called out as a priority acquisition site in the General Plan/ LCP. The project, as proposed would not be inconsistent with the County General Plan/LCP in that it does not preclude the creation of future coastal access.

#### **Development Permit Findings**

 That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity.

This finding can be made, in that the project is located in an area designated for residential uses. Construction will comply with prevailing building technology, the California Building Code, and the County Building ordinance to ensure the optimum in safety and the conservation of energy and resources. The project has been conditioned to require recordation of a maintenance agreement to ensure long-term maintenance of the drainage improvements.

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

This finding can be made, in that the proposed location of the slope repair and the conditions under which it will be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the R-1-6 (Single Family Residential - 6,000 square foot minimum) zone district as the primary use of the property will continue to be residential. Installation of the slope stabilization measures are necessary to ensure safety of existing access to existing residential structures at the top of the bluff and residents in the vicinity.

3. That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.

This finding can be made, in that an Emergency Coastal Development Permit and Grading Permit (201227) was issued for the slope repair due to an imminent risk to health and safety. The project has been designed in accordance with General Plan Policy 6.2.10 (Site development to Minimize Hazards). A Geotechnical Report prepared by Haro, Kasunich, and associates dated April 6, 2021 and accepted by County staff on May 18, 2021 under application REV201113 (Exhibit G).

Further, this finding can be made, in that the proposed residential use is consistent with the use and density requirements specified for the R-UL (Urban Low Density Residential) land use designation in the County General Plan.

A specific plan has not been adopted for this portion of the County.

4. That the proposed use will not overload utilities, and will not generate more than the acceptable level of traffic on the streets in the vicinity.

This finding can be made, in that the construction of the slope repair is to be constructed on an existing developed lot intended to protect the access to existing homes and occupants from further erosion and potential hazard associated with the instability of the coastal bluff. Temporary construction is completed and will not require any further use of utilities and will not

Owner: Mark & Suzanne Cauwels

generate additional traffic on the streets in the vicinity.

5. That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood.

This finding can be made, in that the project is located along a coastal bluff which is subject to coastal erosion. The subject parcel is developed with existing single family dwelling and shared access to a neighboring residence. In terms of design, the project is consistent with the methods for which similar slope repairs have been performed. The proposed project has incorporated revegetation of the slope to further stabilize the project site. Application of black vinyl coating to the safety fencing will further soften any potential visual impact from the project.

6. The proposed development project is consistent with the Design Standards and Guidelines (sections 13.11.070 through 13.11.076), and any other applicable requirements of this chapter.

This finding can be made, in that the proposed repair of slope failure will be of an appropriate scale and type of design that will enhance the aesthetic qualities of the surrounding properties and will not reduce or visually impact available open space in the surrounding area.

#### **Conditions of Approval**

Exhibit D: Project plans, prepared by Haro, Kasunich and Associates revised 4/19/21.

- I. This permit authorizes the construction of a slope failure repair as indicated on the approved Exhibit "D" for this permit. This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:
  - A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
  - B. Meet all requirements of the County Department of Public Works, Stormwater Management. Drainage fees will be assessed on the net increase in impervious area.
  - C. Meet all requirements of the Environmental Planning section of the Planning Department.
- II. All construction shall be performed according to the approved plans for the Grading Permit. Prior to final building inspection, the applicant/owner must meet the following conditions:
  - A. All site improvements shown on the final approved Grading Permit plans shall be installed.
  - B. Pursuant to Sections 16.40.040 and 16.42.080 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.080, shall be observed.

#### III. Operational Conditions

A. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.

#### IV. Indemnification

The applicant/owner shall indemnify, defend with counsel approved by the COUNTY, and hold harmless the COUNTY, its officers, employees, and agents

from and against any claim (including reasonable attorney's fees, expert fees, and all other costs and fees of litigation), against the COUNTY, its officers, employees, and agents arising out of or in connection to this development approval or any subsequent amendment of this development approval which is requested by the applicant/owner, regardless of the COUNTY's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the COUNTY. Should the COUNTY in its sole discretion find the applicant's/owner's legal counsel unacceptable, then the applicant/owner shall reimburse the COUNTY its costs of defense, including without limitation reasonable attorney's fees, expert fees, and all other costs and fees of litigation. The applicant/owner shall promptly pay any final judgment rendered against the COUNTY (and its officers, employees, and agents) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this development approval.

- A. The COUNTY shall promptly notify the applicant/owner of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. The COUNTY shall cooperate fully in such defense.
- B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:
  - 1. COUNTY bears its own attorney's fees and costs; and
  - 2. COUNTY defends the action in good faith.
- C. <u>Settlement</u>. The applicant/owner shall not be required to pay or perform any settlement unless such applicant/owner has approved the settlement. When representing the COUNTY, the applicant/owner shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the COUNTY.
- D. <u>Successors Bound</u>. The "applicant/owner" shall include the applicant and/or the owner and the successor'(s) in interest, transferee(s), and assign(s) of the applicant and/or the owner.

Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

Please note: This permit expires three years from the effective date listed below unless the conditions of approval are complied with and the use commences before the expiration date.

APN: 028-143-35 Owner: Mark & Suzanne Cauwels	
Approval Date:	
Effective Date:	
Expiration Date:	
	Steve Guiney AICP

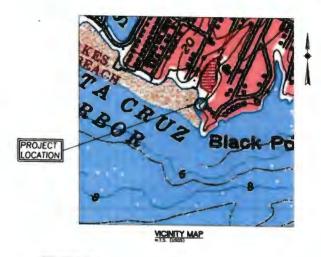
Application #: 201302

Appeals: Any property owner, or other person aggrieved, or any other person whose interests are adversely affected by any act or determination of the Zoning Administrator, may appeal the act or determination to the Planning Commission in accordance with chapter 18.10 of the Santa Cruz County Code.

Deputy Zoning Administrator

#### 23

# 70 GEOFFROY DRIVE EMERGENCY REINFORCED FILL SLOPE ROAD REPAIR 100% DESIGN PLAN



#### SHEET INDEX

CT TITLE SHEET
CZ GRACING SITE PLAN AND SECTIONS

#### GENERAL NOTES

- TOPOGRAPHIC MAPPING WAS PERFORMED BY HOMAN AND WILLIAMS 3849 RESEARCH PARK COLRIT, SLIFE 100 900MIL, CA 93073 PROJECT DAIL, 11 MARCH 2000 PROJECT NO. 27808
- 2. DECIMINA DATA: SANTA CREE COUNTY DATAS RESIDENCE NO. 8. LOCKED 1" HE OF MINOLD IS BALDING DEDICATION PLACES TO
- 3. SASIS OF MEASURES. REFER TO BOWNER AND TRAINING TOPOGRAPHIC IN.
- 4 CONTOUR REFERENCE IS DHE FOOT CLEVERIONS AND DISTANCES SHOWN AND AN OCCUMA FEET
- SOLS REPORT PRETWED BY: HARD, REQUIRED AND ASSOCIATES, INC. 118 ENST LARE ANE. WATERWALE, OR SHOPE PROJECT NO. SYSSAM 2
- ALL CONSTRUCTION AND INSTERNAL SHALL COMPOSES TO THE 2018 EDITION OF THE STATE OF DILLPOSING STANDARD SPECIFICATIONS.
- 7. ALL MODEL RESIGNED ON THE PLANS SHALL CONFORM WITH THE FOLLOWING CODES; 2019 CBC, CAL GREEK AND SONC TITLE 18



#### ABBREVIATIONS

COLUMN TO TO SOLAR FOOT TO SOL

#### ROJECT DESCRIPTION

PRESC CONVENIENCE PROMOTE FOR DESIGN LEVEL DEVALS FOR THE REPORT OF A LINESLIDE WITH ME RENFORCED EARTH FILL SLOPE

HORK SHALL CONSIST OF CONSTRUCTING A 1.6-1 GEOGRO REPORTED EARTH FILL SLOPE FROM TO TOP OF ROADRRY DOWN TO THE PROPERTY LINE, AND RE-ESTABLISHING SURFACE RUNGIT DRIVING

#### SECTION AND DETAIL CONVENTION

SECTION ON SCHOOL SERVICESCOPE OF LICENSE OF



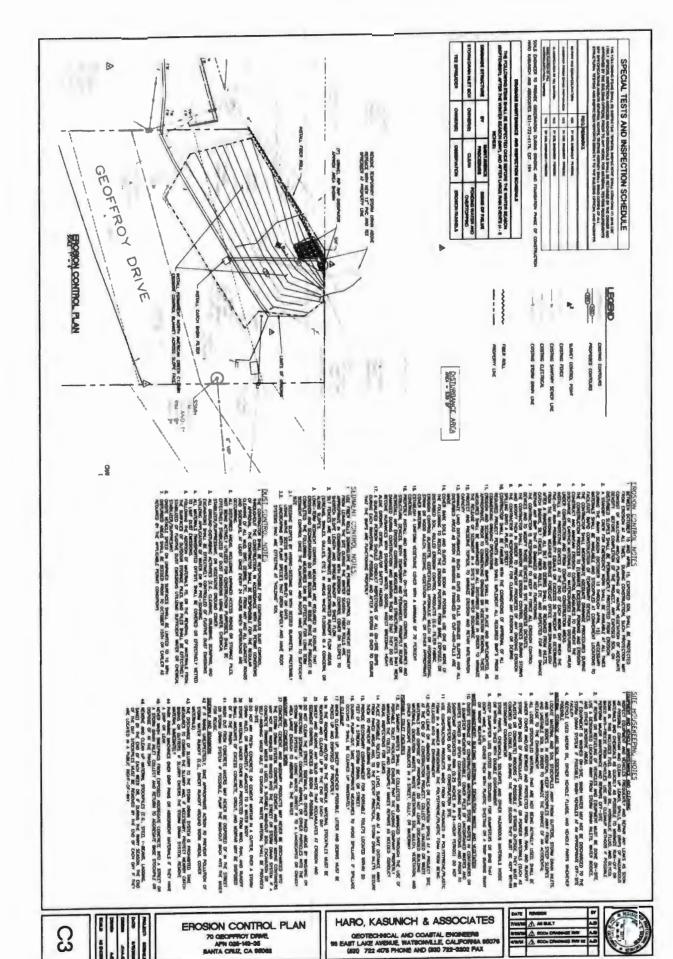


GRO, KASUNICH, & ASSOCIATE DEOTECHICAL AND COARTAL ENDRETHE BIT LATE AVENTE WITHOUT DE SADE FAX. (80) 722-4075 FICHE, AND (80) 722-3202 FAX.

TITLE SHEET



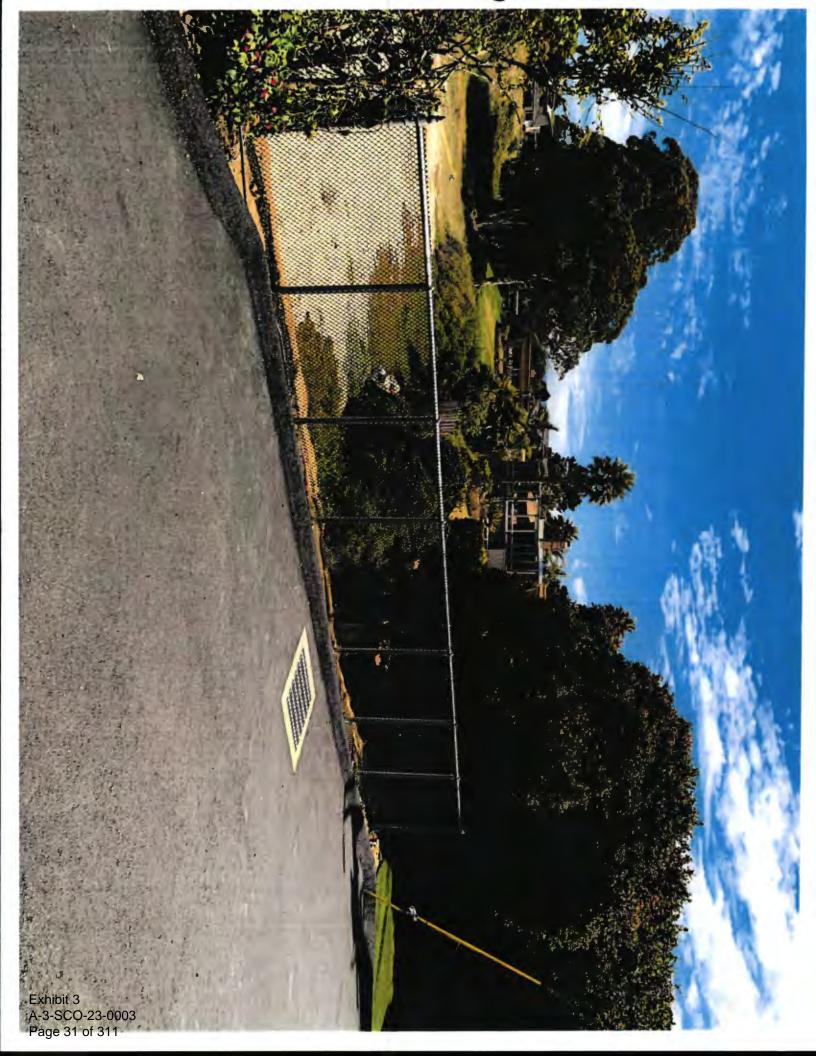


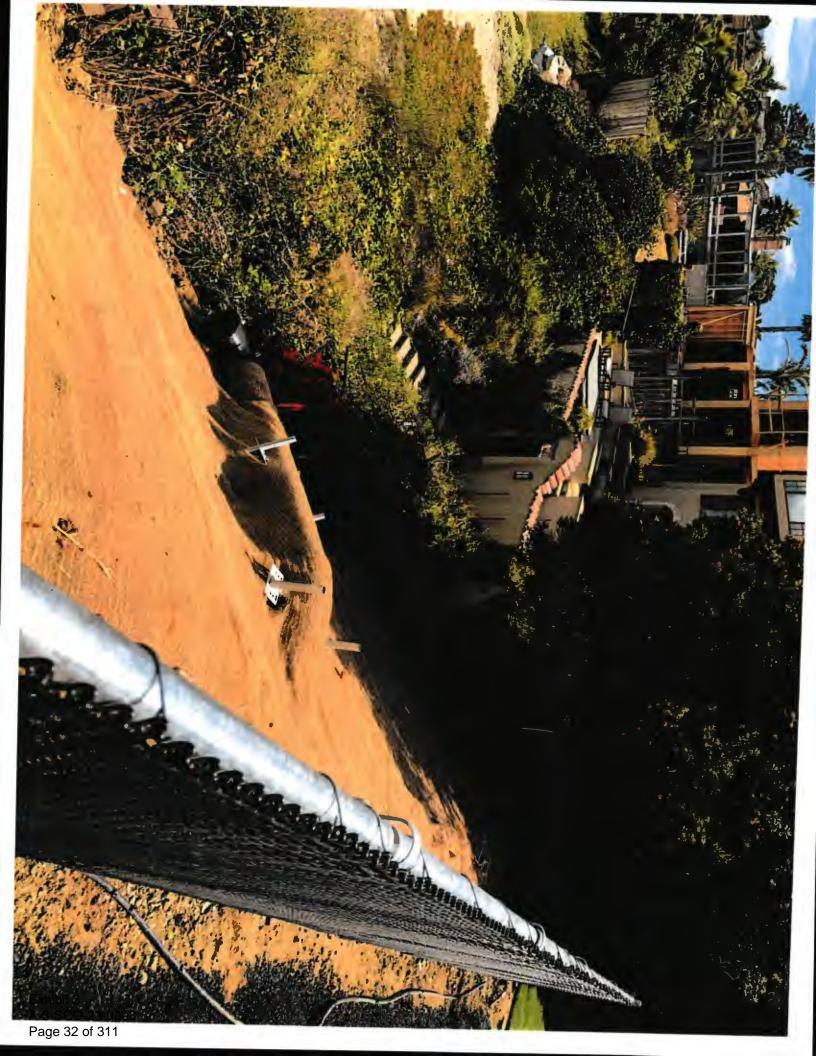


EXHIBIT

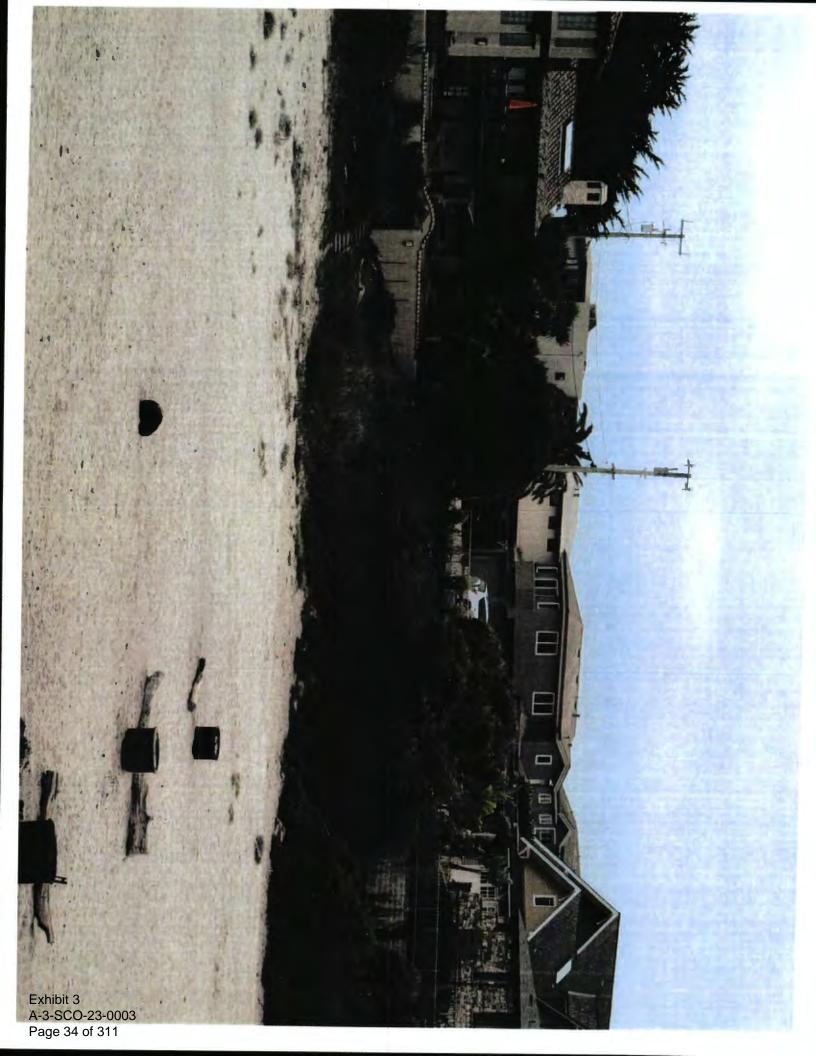
Exhibit 3 A-3-SCO-23-0003 Page 29 of 311









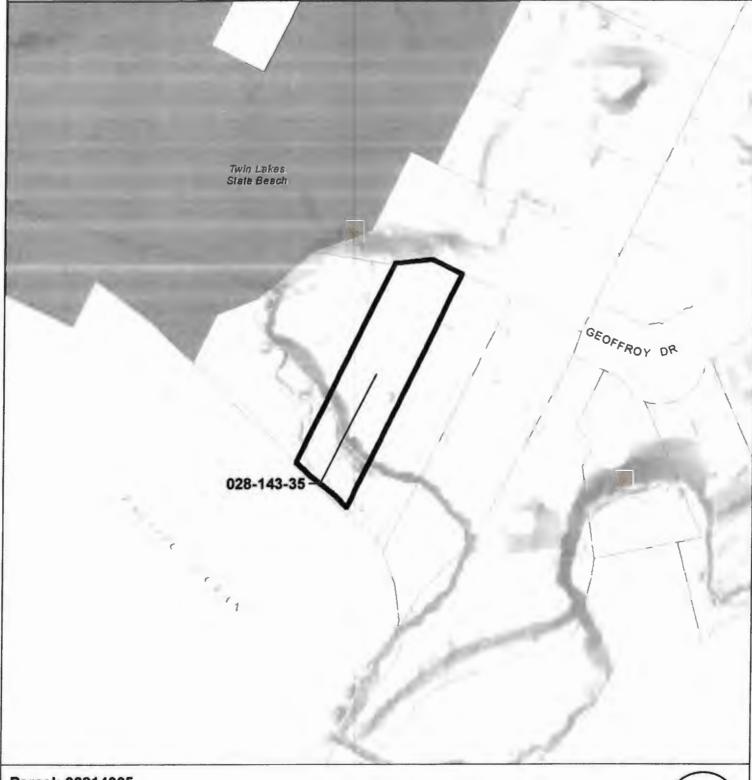




# SANTA CRUZ COUNTY PLANNING DEPARTMENT

# **Parcel Location Map**





Parcel: 02814335

Study Parcel

Assessor Parcel Boundary

Existing Park

Map printed: 11 Aug. 2022

Exhibit 3 A-3-SCO-23-0003 Page 36 of 311



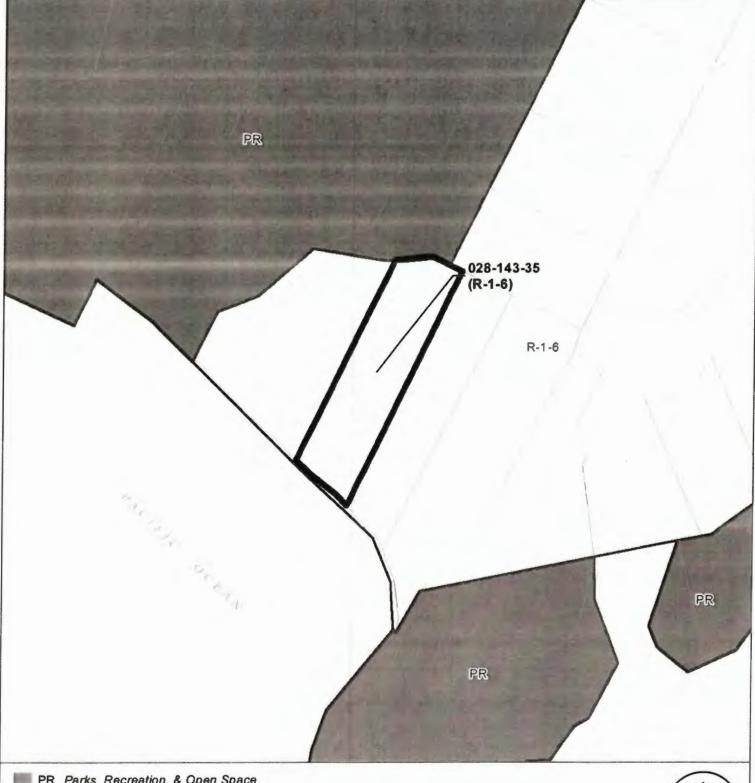


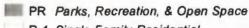


# SANTA CRUZ COUNTY PLANNING DEPARTMENT

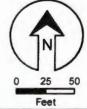
# **Parcel Zoning Map**







R-1 Single-Family Residential



Mapped Area

Exhibit 3

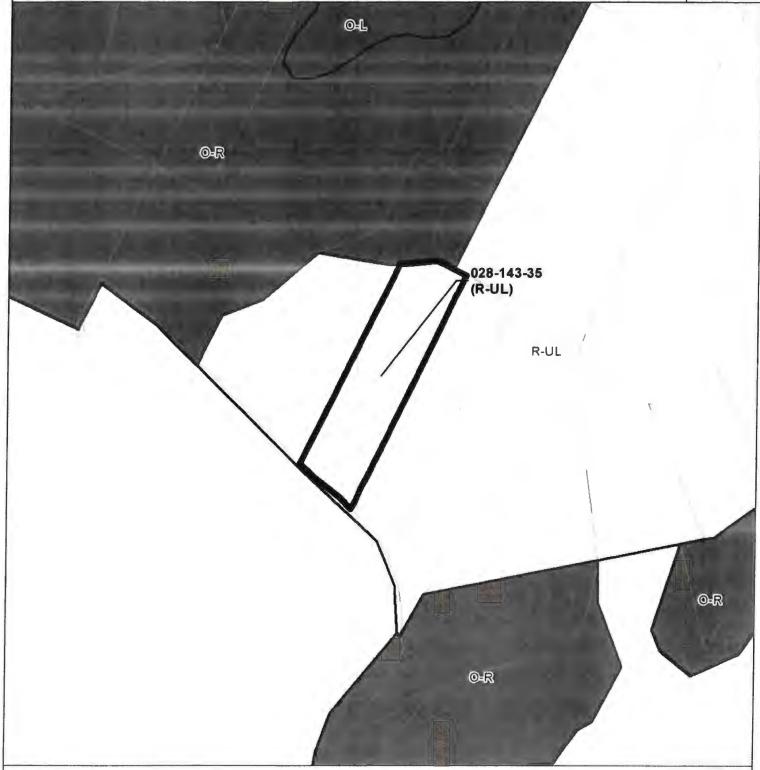
A-3-SCO-23-0003 Page 37 of 311



# SANTA CRUZ COUNTY PLANNING DEPARTMENT

# **Parcel General Plan Map**

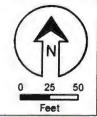






O-R Parks, Recreation & Open Space

R-UL Res. Urban Low Density



Mapped

Area

Application #: 201302 APN: 028-143-35

Owner: Mark & Suzanne Cauwels

### **Parcel Information**

#### **Services Information**

Urban/Rural Services Line: X Inside Outside
Water Supply: Santa Cruz Water District

Sewage Disposal:

County Sanitation District

Central Fire Protection District

Drainage District: Flood Control District 5

#### **Parcel Information**

Parcel Size: Approximately 17,600 square feet

Existing Land Use - Parcel: Residential

Existing Land Use - Surrounding: Residential and Parks, Recreation & Open Space

Project Access: Geoffroy Drive Planning Area: Live Oak

Land Use Designation: R-UL (Urban Low Density Residential)

Zone District: R-1-6 (Single family residential - 6,000 square feet)

Coastal Zone: X Inside Outside
Appealable to Calif. Coastal X Yes No

Comm.

Technical Reviews: Geotechnical Review (REV201113)

#### **Environmental Information**

Geologic Hazards: Not mapped/no physical evidence on site

Fire Hazard: Not a mapped constraint

Slopes: Coastal bluff

Env. Sen. Habitat: No physical evidence on site Grading: No grading proposed

Tree Removal: No trees proposed to be removed

Scenic: Not a mapped resource

Archeology: Not mapped



# COUNTY OF SANTA CRUZ

## PLANNING DEPARTMENT

701 OCEAN STREET, 4<sup>TH</sup> FLOOR, SANTA CRUZ, CA 95060 (831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123 KATHLEEN MOLLOY, PLANNING DIRECTOR

18 May 2021

Mark & Suzanne Cauwels <mark@modernair.biz> P O Box 3705 Merced, CA 95344

Subject:

Review of the Geotechnical Investigation for Temporary Emergency

Reinforced Fill Slope Road Repair at 70 Geoffroy Drive/APN 028-143-35

revised 6 April 2021 by Haro, Kasunich and Associates

Project No. SC5342.2

Project Site: 70 Geoffroy Drive

APN 028-143-35

Application No. REV201113

# Dear Applicants:

The Planning Department has accepted the project site geotechnical investigation report. The following item shall be required:

- 1. All project design and construction shall comply with the recommendations of the subject report; and
- 2. The project geotechnical engineer also prepared the project civil engineering plan A completed Consultants Plan Review Form for the project civil engineering plan set is not required for permit processing.

After building permit issuance the soils engineer must remain involved with the project during construction. Please review the Notice to Permits Holders (attached).

Our acceptance of the report is limited to its technical content. Other project issues such as zoning, fire safety, septic or sewer approval, etc. may require resolution by other agencies.

Please note that this determination may be appealed within 14 calendar days of the date of service. Additional information regarding the appeals process may be found online at: http://www.sccoplanning.com/html/devrev/plnappeal\_bldg.htm

Review of the <u>Geotechnical Investigation for Temporary Emergency Reinforced Fill Slope</u>
Road Repair at 70 Geoffroy Drive/APN 028-143-35 revised 6 April 2021 by Haro,
Kasunich and Associates

B-201113 18 May 2021 Page 2 of 3

If we can be of any further assistance, please contact the undersigned at: <a href="mailto:rick.parks@santacruzcounty.us">rick.parks@santacruzcounty.us</a>

Respectfully,



Rick Parks, GE 2603 Civil Engineer – Environmental Planning Section County of Santa Cruz Planning Department

Cc: Environmental Planning, Attn: Jessica deGrassi

Haro, Kasunich and Associates, Inc. Attn: John Kasunich, GE

Primary Contact: Deidre Hamilton <deidre@hamiltonlandplanning.com>

Attachments: Notice to Permit Holders

Review of the <u>Geotechnical Investigation for Temporary Emergency Reinforced Fill Slope</u>
Road Repair at 70 Geoffroy Drive/APN 028-143-35 revised 6 April 2021 by Haro,
Kasunich and Associates
B-201113
18 May 2021
Page 3 of 3

# NOTICE TO PERMIT HOLDERS WHEN A SOILS REPORT HAS BEEN PREPARED, REVIEWED AND ACCEPTED FOR THE PROJECT

After issuance of the building permit, the County requires your soils engineer to be involved during construction. Several letters or reports are required to be submitted to the County at various times during construction. They are as follows:

- When a project has engineered fills and / or grading, a letter from your soils engineer must be submitted to the Environmental Planning section of the Planning Department prior to foundations being excavated. This letter must state that the grading has been completed in conformance with the recommendations of the soils report. Compaction reports or a summary thereof must be submitted.
- 2. **Prior to placing concrete for foundations**, a letter from the soils engineer must be submitted to the building inspector and to Environmental Planning stating that the soils engineer has observed the foundation excavation and that it meets the recommendations of the soils report.
- 3. At the completion of construction, a Soils (Geotechnical) Engineer Final Inspection Form from your soils engineer is required to be submitted to Environmental Planning that includes copies of all observations and the tests the soils engineer has made during construction and is stamped and signed, certifying that the project was constructed in conformance with the recommendations of the soils report.

If the *Final Inspection Form* identifies any portions of the project that were not observed by the soils engineer, you may be required to perform destructive testing in order for your permit to obtain a final inspection. The soils engineer then must complete and initial an *Exceptions Addendum Form* that certifies that the features not observed will not pose a life safety risk to occupants.

Electronic copies of all forms required to be completed by the Geotechnical Engineer may be found on our website: <a href="www.sccoplanning.com">www.sccoplanning.com</a>, under "Environmental", "Geology & Soils", and "Assistance & Forms".



# **Comments & Correspondence**

**Application Number 201302** 

**EXHIBIT H** 

### CALIFORNIA COASTAL COMMISSION

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



October 23, 2020

Nathan MacBeth
Santa Cruz County Planning Department
701 Ocean Street, 4<sup>th</sup> Floor
Santa Cruz, CA 95060
Nathan.MacBeth@santacruzcounty.us

Subject: County Coastal Development Permit Application Number 201302 (70 Geoffroy Drive Bluff Retention Project)

Dear Mr. MacBeth:

Thank you for the opportunity to comment on pending Santa Cruz County Coastal Development Permit (CDP) Application Number 201302, under which a private property owner seeks permanent authorization for a temporary emergency bluff retention project installed (pursuant to a County emergency permit) at the blufftop and on the bluff face above Black's Point Beach (i.e., the downcoast portion of Twin Lakes State Beach) at 70 Geoffroy Drive in the Live Oak area of the County. The purpose of this letter is threefold: First, we want to make sure that the County is aware of the range of development that has occurred at and near this location without required CDPs, and the implications of these permitting violations to this proposed project; second, given this violation context as well as the fact that this is a follow-up regular CDP application related to temporary emergency development, we also want to make sure that you are aware of the appropriate baseline for your CDP application review; and third, we provide our observations regarding the Coastal Act and Santa Cruz County Local Coastal Program (LCP) issues raised by the proposal, as well as our recommendations on potential measures necessary to be able to approve a CDP consistent with the Coastal Act and the LCP. We note that these three concerns are intertwined, and we recommend that the project be modified in a way that can address all of the associated issues together. Accordingly, please consider the following:

#### **Existing Baseline for CDP Application Review**

Please note that the Commission continues to maintain open and unresolved enforcement cases related to unpermitted development at this location going back to the mid-1990s, including Violation File Numbers V-3-01-055 and V-3-18-0018. These violations include, but are not limited to, the erection of a fence at the blufftop edge, locked blufftop edge gate, barbed wire, and restrictive signage; the planting of bluff-area vegetation; and the use of security guards, all designed to block and deter public access

While V-3-18-0018 was opened to address placement of a vehicular gate across Geoffroy Drive, it references other violations including the blufftop-edge fence, locked blufftop-edge gate, barbed wire, restrictive signage, the planting of bluff-area vegetation, and the use of security guards.

# County CDP Application 201302 70 Geoffroy Drive Bluff Retention Project Page 2 of 7

between Geoffroy Drive and the beach at Black's Point by preventing continued use of pedestrian bluff face pathway to/from the beach.<sup>2</sup> The blufftop and bluff area associated with the proposed project is the same area associated with the violations described, the temporary bluff retention measures (now proposed to be authorized permanently in this CDP application) are in the same bluff area where pedestrians historically accessed the beach, and the now proposed blufftop-edge fence is located in the same area of the previously extant blufftop-edge fence that is a subject of the Commission's violation files.

As a preliminary matter, please note that proposed CDP applications that are intended to authorize prior temporary emergency authorizations, such as the case here, must be evaluated from a baseline that represents the project site before the temporary emergency work was completed. In other words, for purposes of your current CDP application review, and your assessment of the impacts of the proposed project, the "existing" configuration that you must compare to the state that would result from the project is the blufftop and bluff face following the slide that, as we understand it, took out a portion of the slope as well as the blufftop-edge fence.3 In addition, the "existing" configuration that you have to envision as your baseline must be based on the legally established configuration of the site.4 Given that a fence with a locked gate and barbed wire (located along the fence/gate as well as at the base of the bluff) was installed at the blufftop edge without any CDPs, the legally established configuration similarly omits the fence/gate and barbed wire. It also omits vegetation that was planted without required CDPs to, as we understand it, form a barrier to access along the bluff. In short, the analytic baseline for project review in this case is the configuration preceding the 1990sera violations, and without the more recent temporary emergency work. That analytic baseline "existing" configuration here is a gentle bluff slope from Geoffroy Drive to the beach with a rudimentary beach accessway and with a slope failure at the uppermost portion of the bluff. Please ensure that that is the existing baseline that is applied in this case for CDP application review and decision purposes.

#### **Public Recreational Access Issues**

As to the now proposed project that needs to be compared to that "existing" baseline under the CDP application, it is clear from the proposed project materials that you provided to us that the project would modify the upper slope of the bluff in a way that

<sup>&</sup>lt;sup>2</sup> Please see the attached violation letters for a further description of these violations.

<sup>&</sup>lt;sup>3</sup> And note that that removal of the fence helps address the violation associated with the fence from the 1990s, and there is nothing we have seen that would suggest that the fence could be installed again without benefit of a CDP, as has apparently already happened in this case (and which offense has been added to Violation File Number V-3-18-0018).

<sup>&</sup>lt;sup>4</sup> In other words, CDP applicants cannot use unpermitted activities to modify the baseline for CDP evaluation. For example, if an applicant acts without the legally required authorizations, including required CDPs, to remove all vegetation that would constitute ESHA on a site, and then proposes a house on that site, the "existing" configuration for CDP evaluation is not the denuded non-ESHA site, rather it is the site as it existing before the unpermitted vegetation removal. While that example speaks to ESHA, the same principles apply here. See, e.g., LT-WR, L.L.C. v. California Coastal Commission (2007), 152 Cal.App.4<sup>th</sup> 770, 797.

# County CDP Application 201302 70 Geoffroy Drive Bluff Retention Project Page 3 of 7

would prevent use of the rudimentary accessway to the beach, and it includes a new fence along the blufftop edge that would also block access to that slope area in any case. We do not believe that such a project can be found Coastal Act<sup>5</sup> or LCP consistent with respect to public recreational access. In terms of the Coastal Act, Section 30210 requires that public recreational access opportunities be maximized, while respecting the rights of private property owners. 6 Section 30211 prohibits development from interfering with the public's right of access to the sea (such as access to the beach here) if such rights were acquired through historical use. In approving new development. Section 30212 requires new development to provide access from the nearest public roadway (here Geoffroy Drive downcoast of the site) to the shoreline and along the coast (here to Black's Point Beach), save certain limited exceptions, such as when adequate access already exists (not the case from Geoffroy Drive to the beach). Section 30213 speaks to ensuring that free and low-cost options, such as the beach accessway in question here, are available to coastal visitors. And Sections 30220 through 30223 protect coastal areas suited for water-oriented activities, oceanfront land suitable for recreational use, and upland areas needed to support recreational uses, all of which are applicable in this case.

Similarly, the County's LCP also protects public recreational access including requiring maximized public use and enjoyment of coastal recreational resources, provision of shoreline and beach access to serve the public and coastal neighborhoods, encouraging access and connections between parks, and visual shoreline access (see, for example, LCP Land Use Plan (LUP) Objectives 7.7 a, b, and c, and LUP Policies 7.7.1, 7.7.6, 7.7.9, 7.7.10, and 7.7.11, Chapter 7 Land Use Programs a and b, and LUP Policies 7.7.18 and 7.7.19). Further, the LCP includes required CDP findings, and these include requiring that the project conform with the LUP's public access, recreation, and visitor-serving policies, that the project meets all other LCP provisions, and that project conform to the Chapter 3 policies of the Coastal Act (see LCP Implementation Plan (IP) Section 13.20.110). The LCP also has exacting design criteria for development proposed in scenic areas such as this (requiring visual compatibility, minimized disturbance, etc. – see IP Section 13.20.130), and any project here will need to address those requirements.<sup>7</sup>

<sup>&</sup>lt;sup>5</sup> The proposed project is located seaward of the first public road and the sea, and thus it must be found consistent with all LCP policies as well as the Coastal Act's public recreational access provisions (pursuant to Coastal Act Section 30604(c)).

<sup>&</sup>lt;sup>6</sup> The Coastal Act Section 30210 direction to maximize public recreational access opportunities represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect: it is not enough to simply *provide* access to and along the coast, and not enough to simply *protect* access, rather such access must also be *maximized*. This terminology distinguishes the Coastal Act in certain respects, and it provides fundamental direction with respect to projects along the California coast that raise public recreational access issues, like this one.

<sup>&</sup>lt;sup>7</sup> Note, for example, that for beach viewsheds such as this, Section 13.20.130 explicitly requires that: "Development shall be sited and designed to fit the physical setting carefully so that its presence is subordinate to the natural character of the site, including through appropriately maintaining natural features (e.g., streams, riparian corridors, major drainages, mature trees, dominant vegetative communities, rock outcroppings, prominent natural landforms, tree groupings, etc.) and requiring

# County CDP Application 201302 70 Geoffroy Drive Bluff Retention Project Page 4 of 7

The project as proposed simply does not meet any of these Coastal Act or LCP tests. In place of maximizing public recreational access opportunities compared to the existing baseline, it would essentially block and preclude any form of access here. Further, the LCP explicitly directs that LCP-designated neighborhood public accessways (where the rudimentary accessway in question in this application is *explicitly so designated* by LUP Policy 7.7.18) be improved, including via path improvements and enhanced maintenance, and further the LCP explicitly calls for an overlook/vista point to be developed with benches and railings *at this location* (LUP Program 7.7(c)). In place of these LCP-required provisions (none of which are addressed/provided for by the proposed project), the proposed project would block and otherwise prevent public access here. Accordingly, we do not believe that the proposed project can be found consistent with the Coastal Act or the LCP on these points.

### Shoreline Armoring Issues

Pursuant to the LCP, a "shoreline protection structure" is defined as "any structure or material, including but not limited to riprap or a seawall, placed in an area where coastal processes operate" (IP Section 16.10.040(3g)). The proposed slope repair includes a 1.4:1 geogrid reinforced fill slope, a 2-foot keyway into the Purisima formation covered with a North American green erosion control blanket along a coastal bluff above the sandy beach where coastal processes operate, and thus constitutes a shoreline protection structure. Per the LCP, such shoreline protection structures are only allowed "where necessary to protect existing structures from a significant threat" (see LUP Policy 6.2.16 and IP Section 16.10.070(h)(3)). Such structural protection is only allowable when non-structural measures are infeasible, and when such protection does not reduce public beach access, adversely affect shoreline processes and sand supply, adversely impact recreational resources, or negatively impact habitat. On the whole, these LCP policies recognize that shoreline protection structures have negative coastal resource impacts and are to be utilized spanngly - and only when it can be demonstrated that such measures are warranted and appropriately mitigated, as directed by the LCP.

Here, it is not clear that the proposed project can meet any of these LCP tests either. First, the existing structure being protected is ostensibly the driveway area above the rudimentary trail area, and the "significant threat" is presumably the recent slope failure. However, it is not clear from the project materials that that driveway area would constitute an "existing structure" for shoreline protection structure purposes including because it appears to have been completely redone and replaced since 1977, nor is it clear that the slope failure constitutes a significant threat to it. Further, as a portion of a larger driveway area, it appears that there are likely alternative measures available to address such a threat, should it be conclusively demonstrated, absent the introduction of shoreline protection structures, including via non-structural measures (e.g., realigned pavement area), such as those that might allow for the slope to lay back further naturally, in a way that the failure seems to suggest. Even if the proposed project were

appropriate setbacks therefrom. Screening and landscaping suitable to the site shall be used to soften the visual impact of development unavoidably sited in the public viewshed."

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to meet that portion of the LCP's tests, based on evidence which staff is currently aware of it cannot meet the requirement that it not reduce public beach access or adversely impact recreational resources, including as described in the discussion above. On the contrary, as proposed the project would effectively eliminate any potential for such beach access, and adversely impact recreational utility, at this location, the proposed project would be inconsistent with the LCP on these points. Finally, the effect of the shoreline protection structure on shoreline processes and sand supply have not been documented in the project materials provided. That said, it is our experience that almost all shoreline protection structures, such as the bluff retention structure proposed in this case, lead to discernable and quantifiable impacts on shoreline sand supply and related processes, ultimately helping to contribute to a loss of beaches.

In short, it is not clear that the proposed project can meet all applicable LCP armoring tests required for approval. What *is* clear is that it cannot meet certain LCP armoring tests related to protection of public access, recreation, and the shoreline. Thus, the proposed project cannot be found consistent with the LCP on these points either.

#### **CCC Staff Preliminary Recommendation**

We believe that the most efficient way of addressing the issues described would be to ensure that the bluff retention structure and related development is approved in such a way that it also accommodates public access to the beach. Given that the existing condition for purposes of CDP application review is treated as being the presence of a rudimentary access trail, at a minimum, the project needs to provide for same. And if subsequent materials demonstrate that the shoreline protection structure itself proposed to be retained in this application leads to its own coastal resource impacts, as expected, then we recommend that required mitigation to offset such impacts be applied in a way that can enhance the historical rudimentary beach accessway, including as directed by the LCP. As to the LCP-required overlook, it would seem that any requirements thereto are probably best applied to improvements to the accessway itself (e.g., installing at least rudimentary steps along the bluff, if not a low-key stairway that hugs the bluff, etc.), although we are also open to the LCP-described overlook improvements at this location. If fencing is considered, we strongly recommend that only the minimum amount of such fencing as may be required for public safety purposes be allowed at the blufftop edge, and that there be a sufficient opening in it to allow users easy access to the accessway itself. We do not see any compelling Coastal Act or LCP reason for barbed wire, and we believe that it is actually inconsistent with public viewshed and public recreational access provisions, and thus we recommend that it be removed from the project. All signage and any other related development (e.g., drainage components, landscaping to help camouflage the retaining structure and any drainage, etc.) needs to be sited and designed in such a way as to not frustrate the public's ability to access and use the accessway improvements. And finally, all development needs to recognize that it is proposed in a scenic area adjacent to the beach, and all such development must be sensitive to the aesthetics of that setting, including through minimizing visibility and making use of neutral/natural materials and colors as much as possible.

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In short, we believe that the Coastal Act and LCP require modifications to the proposed project to find it consistent with applicable provisions. And we also believe that some fairly minor modifications, including as suggested above, can correct not only the Coastal Act and LCP inconsistencies with the project as proposed, but that these modifications can also serve to resolve longstanding violations associated with this site. On the latter point, please note that the LCP also *requires* that such violations be resolved (and indeed affected coastal resources enhanced) as part of proposed CDP applications (see IP Section 13.20.170),<sup>8</sup> and these types of modifications would also allow for an application to be approved at all in relation to such violations (and conversely, if the violations are not resolved, then Section 13.20.170 does not actually allow for such approval, and denial is required).

Finally, as I am sure you are aware, this site is the subject of significant public interest, particularly related to past violations that have blocked beach access here. We strongly recommend that the County provide the widest possible notice for all hearings on this CDP application, including so that all nearby residents and property owners are made aware, but also so that the broader community is also made aware and can readily participate. To the latter point, we suggest that prominent, accurate (e.g., in terms of what is considered existing versus proposed, as described above; that County CDP action here would be appealable to the Commission; etc.), and descriptive notices be erected where Black's Point Beach and Sunny Cove Beach users can easily see them, in addition to posting at and near the site (e.g., at the base of the bluff, and the public Geoffroy Drive street end). In other words, we would suggest doing everything possible to maximize the public's ability to participate in all proceedings regarding this matter.

Again, thank you for your invitation to provide comments on the proposed CDP application for this project. As described, the project raises a series of significant and substantial coastal resource issues that will require careful consideration, as well as project modifications, to allow for a CDP to be approved consistent with the Coastal Act and the LCP. And, as described, if the proposed project is not so modified, we do not believe that it can be found consistent with these applicable provisions, including because if the CDP violations are not resolved then the LCP requires that the project be denied. Fortunately, we believe that even fairly modest changes can readily address the coastal resource concerns at this location, and we look forward to working with you, the applicant, the community, and interested parties to come to a beneficial resolution through this CDP application. Please do not hesitate to contact me if you have any questions or would like to further discuss these comments.

<sup>&</sup>lt;sup>8</sup> Section 13.20.170 states in operable part: "Development that is proposed for property on which there are existing unresolved coastal development permit violations shall only be approved and allowed if: (1) the approval resolves all such violations through its terms and conditions and (2) such resolution protects and enhances coastal resources, including that it results in a coastal resource condition that is as good or better than existed prior to the violations; or (3) the proposed development is necessary to ensure health and safety, in which case the approval for the development shall specify that an application to resolve the unresolved coastal development permit violation(s) shall be made within 90 days of the approval."

# County CDP Application 201302 70 Geoffroy Drive Bluff Retention Project Page 7 of 7

Sincerely,

- DocuSigned by:

Rainey Graeven

Rainey Graeven
Coastal Planner
Central Coast District
California Coastal Commission

<u>Attachments</u>: Letters from California Coastal Commission Enforcement Staff to County staff and the Geoffroy Drives Homeowners Association dated April 18, 2018, May 4, 2018, June 1, 2018, and June 29, 2018.

#### cc (sent electronically):

Deidre Hamilton, Applicant's Representative
John Leopold, First District Supervisor
Kathy Molloy, Santa Cruz County Planning Director
Matt Johnston, Santa Cruz County Code Compliance
Jeff Gaffney, Santa Cruz County Parks Director
Sheila Branon, California Department of Parks and Recreation

## CALIFORNIA COASTAL COMMISSION

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



April 11, 2018

Kathy Previsich, Planning Director Santa Cruz County Planning Department 701 Ocean Street, 4th Floor Santa Cruz, CA 95060

Re: Violation File Nos. V-3-18-0018 and V-3-01-055 - Geoffroy Drive Gate, Fence and Sign Violations Interfering with Public Access to Twin Lakes State Beach

Dear Ms. Previsich:

As you may already be aware, it was brought to our attention, by both the public and by County staff, that a gate has been placed at the western end of the County-maintained portion of Geoffroy Drive in the Live Oak area without a coastal development permit ("CDP"). The subject gate creates a private gated community at the expense of historic public access to Twin Lakes State Beach. Public access through Geoffroy Drive to the beach is particularly important because it provides (or rather provided when it was open) direct California Coastal Trail ("CCT") lateral access along the shoreline from Twin Lakes State Beach to Sunny Cove and Santa Maria Cliffs/Corcoran Lagoon beach further downcoast. When this access is not open, as is currently the case, the public must circumvent the entire residential neighborhood between 14th Avenue and Geoffroy Drive to get from Twin Lakes to Geoffroy Drive - a distance of about three-quarters of a mile. This CCT "gap" has significantly adversely impacted public recreational access for some time, and we have received multiple complaints from the public regarding same.

We are writing to formally bring this matter to the County's attention and to offer assistance in resolving issues associated with this unpermitted development that is adversely affecting public access.

#### **Violations**

On January 22, 2016 Santa Cruz County issued Over Height Fence Certification No. 151297 to Dawna Sutton, apparently on behalf of the Geoffroy Homeowners Association<sup>1</sup> ("HOA"), to authorize placement of a "six-foot driveway gate" at the above described location.

Santa Cruz County Local Coastal Program ("LCP") Section 13.20.040 and Coastal Act Section 30106 define "development" (in relevant part) as follows:

Dawna F. Sutton - APN 028-143-29; Norman and Carol Chapman - APN 028-143-37; Mark and Suzanne Cauwels - APN 028-143-35; Fowler Packing Company - APN 028-143-34; Robert Lloyd and Karen Steadman - APN 028-143-44.

"Development" means on land, in or under water, the placement or erection of any solid material or structure; ... change in the density or intensity of use of land; ... change in the intensity of use of water, or of access thereto..."

LCP Section 13.20.060 discusses certain types of development that are exempt from CDP requirements and references Section 13250 from the Coastal Commission's regulations found at Title 14 of the California Code of Regulations ("CCR") which specifies certain types of development that require CDPs. 14 CCR Section 13250(b)(4) requires a CDP for "any significant non-attached structure such as garages, fences, shoreline protective works or docks" where there is an existing single-family residential building. The gate here is indistinguishable from a fence for the purposes of 13250(b)(4). Even if the erected fence is not associated with an existing single-family residential building, 14 CCR section 13253(b)(7) specifically requires a CDP for any improvement to [the street] which changes the intensity of use of [the street]." In short, the subject gate is clearly "development" as defined in the Coastal Act and the LCP that is not exempt from CDP requirements. Since an Over Height Fence Certification is not a CDP, the gate is unpermitted development and, thus, a violation of both the LCP and the Coastal Act.

Moreover, Coastal Act Section 30604(c) requires that any CDP issued for development between the nearest public road and the sea (which is the case here) be in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act including Section 30211 which requires that "Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization..." The subject gate is located between the first public road and the sea and there is evidence that the public has long used the section of Geoffroy Drive that is now closed off by the subject gate to access Twin Lakes State Beach.

In addition to the above gate, there is another unpermitted gate/fence at the very western end of Geoffroy Drive (west of the gate described above) blocking access down the bluff and to the beach at Twin Lakes. This gate/fence appears to be located on the bluff edge on APN 028-143-44 and/or APN 028-143-34 and was also placed without CDP authorization. In both cases, the gate and the gate/fence are also accompanied by signs that purport to prohibit public access, and these signs too are unpermitted. The Commission has long been aware of this unpermitted gate/fence and signs, and notes that these are also the subject of another Commission enforcement case (Violation File No. V-3-01-055).

#### Resolution

In this case, as explained above, we believe that the gate placed pursuant to Over Height Fence Certification No. 151297 requires a CDP and thus needs to be removed or, if not removed, authorized by a CDP. Any such CDP, if issued for the gate, would need to include at a minimum provisions for public access (e.g., pedestrian gate/signage) to Twin Lakes State Beach. Further, we believe that the County should either require removal of the gate/fence located at the western edge of the bluff and restore public access down to the beach or require a CDP for same – again, with provisions for public access. In all cases, signage would also need to be removed, or replaced subject to a CDP, to account for public access.

We would like to coordinate with the County regarding resolution of these violations, and we are offering to assist the County in the enforcement of the County's LCP and the public access requirements of the Coastal Act. Coastal Act Section 30810(a) provides that, among other circumstances, the Commission may issue an order to enforce the requirements of a certified LCP in the event that the local government requests that the Commission assist with or assume primary responsibility for issuing such order, or if the local government declines to act or fails to act in a timely manner to resolve the violation after receiving a request to act from the Commission. Coastal Act Section 30821 authorizes the Commission to impose administrative penalties for violations of the public access provisions of Coastal Act, which both apply to this directly, via Section 30604(c), and are implemented through the County's LCP. The Commission could also seek civil penalties, or take other enforcement actions against the violator, as described in Chapter 9 of the Coastal Act.

We would like to work with the County to resolve this matter and restore public access in this location. Please let me know if the County intends to take enforcement action for the above-mentioned violations, if we can be of assistance, or if the County would prefer that the Commission address them. If the latter, or if the County simply declines to act or fails to take any action in a timely manner, the Commission may pursue enforcement action as described above.

Thank you for your time and attention to this matter. If you or your staff have any questions, need more information, or would like to meet and talk about this matter, please contact me at (831) 427-4885. I look forward to hearing from you soon.

Sincerely

N. Patrick Veesart

**Enforcement Supervisor** 

Northern Districts

cc: (

Geoffroy Drive HOA

John Leopold, First District Supervisor, Santa Cruz County

Jeff Gaffney, Santa Cruz County Parks Director

### CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE 725 FRONT STREET, SUITE 300 SANTA CRUZ, CA 95060 PHONE (831) 427-4863 FAX (831) 427-487 WFB WWW COASTAL CA GOV



#### NOTICE OF VIOLATION

May 4, 2018

Ira James Harris, Esq. P. O. Box 1478 Orinda, CA 94563

Violation<sup>1</sup> Description:

Placement of a locked "six-foot driveway gate" and restrictive

signage without a coastal development permit ("CDP") blocking

historic public access to Twin Lakes State Beach

Violation File No.:

V-3-18-0018 - Geoffroy Homeowners Association

Property Location:

Western end of the County-maintained segment of Geoffroy Drive

in the Live Oak area of Santa Cruz County

Dear Mr. Harris:

We are in receipt of your letter to Santa Cruz County Planning Director Kathy Previsich (now Kathy Molloy), dated April 19, 2018, regarding the above-referenced violation file and we understand that you are representing the five property owners comprising the Geoffroy Homeowners Association ("HOA")<sup>2</sup> in this matter. As you may or may not know, Santa Cruz County requested that the Coastal Commission take the enforcement lead on this matter and we will be working closely with the County to enforce the requirements of the County's Local Coastal Program ("LCP") and the Coastal Act. This letter is a Notice of Violation letter to the HOA and includes responses to some of the issues you raise in your letter to the County.

As you know, the HOA placed a gate and restrictive signage at the western end of the Countymaintained portion of Geoffroy Drive in the Live Oak area of Santa Cruz County without a

Please note that the description herein of the violation at issue is not necessarily a complete list of all unpermitted development on the subject properties that is in violation of the Coastal Act and/or the Santa Cruz County LCP, but only that of which Commission Staff is currently aware. Accordingly, you should not treat silence in this letter regarding (or failure to address) any other unpermitted development on the subject properties as indicative of Commission acceptance of, or acquiescence in, any such development. Please further note that the term "violation" as used throughout this letter refers to alleged violations of the Coastal Act and/or the County's LCP as determined by Commission Staff.

Dawna F Sutton - APN 028-143-29; Norman and Carol Chapman - APN 028-143-37; Mark and Suzanne Cauwels APN 028-143-35; Fowler Packing Company APN 028-143-34; Robert Lloyd and Karen Steadman APN 028-143-44.

CDP. The subject gate was placed to create a private gated community at the expense of historic public access to Twin Lakes State Beach. Public access through Geoffroy Drive to the beach is particularly important because it provides (or rather provided when it was open) direct California Coastal Trail ("CCT") lateral access along the shoreline from Twin Lakes State Beach to Sunny Cove and Santa Maria Cliffs/Corcoran Lagoon beach further downcoast. When this access is not open, as is currently the case, the public must circumvent the entire residential neighborhood between 14th Avenue and Geoffroy Drive to get from Twin Lakes to Geoffroy Drive - a distance of about three-quarters of a mile. This CCT "gap" has significantly adversely impacted public recreational access for some time, and we have received multiple complaints from the public regarding same.

#### Unpermitted Development Violation

On January 22, 2016 Santa Cruz County issued Over Height Fence Certification No. 151297 to Dawna Sutton, on behalf of the Geoffroy Homeowners Association ("HOA"), to authorize placement of a "six-foot driveway gate" at the above described location.

Santa Cruz County Local Coastal Program ("LCP") Section 13.20.040 and Coastal Act Section 30106 define "development" (in relevant part) as follows:

"Development" means on land, in or under water, the placement or erection of any solid material or structure; ... change in the density or intensity of use of land; ... change in the intensity of use of water, or of access thereto..."

LCP Section 13.20.060 discusses certain types of development that are exempt from CDP requirements and specifically references Sections 13250 and 13253 from the Coastal Commission's regulations found at Title 14 of the California Code of Regulations ("CCR") as exceptions to LCP Section 13.20.060 and which specify certain types of development that *do* require CDPs. 14 CCR Section 13250(b)(4) requires a CDP for "any significant non-attached structure such as garages, fences, shoreline protective works or docks" where there is an existing single-family residential building. The gate here is indistinguishable from a fence for the purposes of 13250(b)(4). As explained further below, 13250(b)(4) is applicable here because the subject gate is located between the sea and the first public road paralleling the sea and is also within 300 feet of the mean high tide of the sea.

In our previous letter (to the County) and in this letter we explain that 14 CCR Sections 13250(b)(4) and 13253(b)(7) preclude the subject gate from being considered CDP-exempt development pursuant to the LCP. For purposes of that discussion, please note that LCP Policy 13.20.061(B)(4) reflects and incorporates the relevant standard from 14 CCR Section 13250(b)(4); likewise, LCP Policy 13.20.062(B)(4) reflects and incorporates the relevant standard from 14 CCR Section 13253(b)(7). Furthermore, as previously mentioned, LCP Policy 13.20.060 specifically references and incorporates 14 CCR Sections 13250, 13252, and 13253 as exceptions to the LCP's exemption provisions. Thus, the distinction whether the subject gate is precluded from being CDP-exempt development pursuant to the Commission's regulations or the LCP is not particularly critical here. The important point is that the subject gate is not CDP-exempt considering the standards specified under either the Commission's regulations or the LCP.

Even if the subject gate is not associated with an existing single-family residential building, 14 CCR section 13253(b)(7) specifically requires a CDP for any improvement to [the street] which changes the intensity of use of [the street]." In short, the subject gate is clearly "development" as defined in the Coastal Act and the LCP that is not exempt from CDP requirements. Since an Over Height Fence Certification is not a CDP, the gate is unpermitted development and, thus, a violation of both the LCP and the Coastal Act.

As we indicated in our letter to Santa Cruz County dated April 11, 2018, in addition to the above gate, there is another unpermitted gate/fence at the western end of Geoffroy Drive (west of the gate described above) blocking access to a trail down the bluff and to the beach at Twin Lakes. This gate/fence appears to be located on the bluff edge on APN 028-143-44 and/or APN 028-143-34 and was also placed without CDP authorization. That violation is the subject of Violation File No. V-3-01-055 and will be addressed in a separate letter.

In both cases, however, the gate and the gate/fence are also accompanied by signs that purport to prohibit public access, and these signs too are unpermitted.

#### **Public Access Violation**

There are a number of Coastal Act provisions relevant to this situation. Section 30604(c) requires that development between the nearest public road and the sea be in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. Section 30210 of the Coastal Act requires that "maximum access... and recreation opportunities shall be provided for all the people..." Section 30211 requires that development "...not interfere with the public's right of access where acquired through use or legislative authorization..." Section 30213 requires that "lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided." As illustrated by these provisions of the Coastal Act, maximizing public access to and along the coast and maximizing public recreational opportunities in the Coastal Zone are high priorities for the Coastal Commission, are specifically protected under the Coastal Act, and are emphasized as basic goals of the State for the Coastal Zone in Coastal Act Section 30001.5.

The subject gate and prohibitive signage are located between the first public road and the sea and there is compelling evidence that the public has long used the segment of Geoffroy Drive (and the bluff trail) that is now closed off by the gate to access Twin Lakes State Beach such that this use has ripened into a public prescriptive right. Therefore, by adversely affecting public access to the beach through the unpermitted installation of a gate and signage, it appears your clients are in violation of the public access policies of the Coastal Act, including Sections 30210, 30211, and 30213.

In cases involving violations of the public access provisions of the Coastal Act, as appears to be the case here, Section 30821 authorizes the Commission to impose administrative civil penalties in an amount of up to \$11,250 per day for each violation. Section 30821(h) states the following:

(h) Administrative penalties pursuant to subdivision (a) shall not be assessed if the property owner corrects the violation consistent with this division within 30 days of receiving written notification from the commission regarding the violation, and if the alleged violator can correct the violation without undertaking additional development that requires a permit under this division. This 30-day timeframe for corrective action does not apply to previous violations of permit conditions incurred by a property owner.

Please consider this letter to be "written notification" for the purposes of Section 30821(h).

#### **Enforcement Remedies**

In addition to the administrative penalties cited above, Chapter 9 of the Coastal Act contains a number of potential remedies to address violations of the Coastal Act including the following: Sections 30809(a) and 30810(a) of the Coastal Act provide that the Executive Director of the Coastal Commission and the Commission itself, respectively, may issue a cease and desist order to enforce the requirements of the Coastal Act or a certified LCP. Section 30811 authorizes the Commission to require restoration of a site if unpermitted development inconsistent with the Coastal Act has occurred and is causing ongoing damage to coastal resources. Additionally, Sections 30803 and 30805 authorize anyone to initiate litigation to seek injunctive relief and recovery of civil penalties in response to any violation of the Coastal Act, respectively. Section 30820(a)(1) provides that any entity who undertakes development in violation of the Coastal Act may be subject to civil liability in an amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) provides that, in addition to any other penalties, any entity that "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act may incur civil liability of not less than \$1,000 nor more than \$15,000 per violation for each day in which the violation persists. Finally, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, the Executive Director would also be able to record a Notice of Violation against your client's property.

#### Response to Your Letter to Santa Cruz County

In your April 19, 2018 letter to the County you suggest that the Commission's offer of assistance to the County was made "disingenuously." Actually, it was (is) a sincere offer – one that we often make to local governments in cases where we have open violation files and/or "tools" that might make our direct involvement in enforcement effective from both our and the local government's perspectives. In this case, the violations have a public access component and we have found that our administrative penalty authority pursuant to Coastal Act Section 30821 is particularly effective in resolving public access violations.

First, you allege that our letter to the County "demands that the County retract its prior approval of the improvements (resulting in the removal of a very expensive improvement)..."

Our letter in no way demands retraction of Over Height Fence Certification No. 151297; the Commission has no position regarding whether the Over Height Fence Certification was properly issued as a matter of the local permitting process. The basis in our letter for stating that the subject gate "needs to be removed or, if not removed, authorized by a CDP" is the simple fact that the subject gate constitutes unpermitted development for purposes of the Coastal Act and the County's LCP.

On that note, you go on to state that our letter to the County asserts that the subject gate placed by the HOA "...violates County Code 13.20.040..." Actually Section 13.20.040 of the LCP defines terms used in the ordinance. We cited the LCP's definition of "Development" in our letter for the purpose of providing background context that placement of the subject gate constitutes development regulable by CDP, notwithstanding any claim of exemption. We did not assert that the subject gate violates that section.

LCP Section 13.20.040 also defines "Appealable area" which you discuss in your letter, but whether the subject gate is appealable or not is not at issue at this time as the County has not yet approved a CDP authorizing the subject gate. In any case, if/when the County does approve a CDP for the subject gate, said CDP would, in fact, be appealable as the subject gate is located "...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 tideline of the sea where there is no beach, whichever is the greater distance..." and "...within 300 feet of the top of the seaward face of any coastal bluff..." You assert that the former is not correct, but you concede that the subject gate "may very well be within 300 feet of the seaward face of a coastal bluff." Any of the three aforementioned standards is sufficient to conclude that the subject gate is appealable. In fact, the subject gate appears to be located within 300 feet of blue water, is between the sea and the first public road paralleling the sea and is within 300 feet of the top of the seaward face of the bluff.

You assert that since the County has a certified LCP, it is the County Planning Department that determines whether or not the subject gate requires a CDP or falls within the exemptions specified in LCP Section 13.20.066. County staff made such a determination, but the County's LCP and the Coastal Act clearly recognize the Executive Director's authority to review the County's exemption determination.<sup>4</sup>

You go on to argue that the subject gate is exempt from CDP requirements under LCP Section 13.20.061(A) and that 14 CCR Sections 13253(b)(7) and 13250(b)(4) and Coastal Act Section 30604(c) are not applicable. As explained in some detail in this letter and in our letter to the

<sup>&</sup>lt;sup>4</sup> LCP Section 13.20.060 recognizes that the County's "exemption determination can be challenged," citing LCP Section 13.20.080 In turn, LCP Section 13.20.080(B)-(D) recognizes the Executive Director's authority to challenge the County's exemption determination. Specifically, LCP Section 13.20.080(B)-(C) allows the County to request "a Commission determination as to the appropriate designation"; likewise LCP Section 13.20.080(C)-(D) recognizes the Executive Director's authority to undertake "a site inspection where such inspection is warranted" to determine whether the County's exemption determination was appropriate or not

County, we disagree. Regarding your reliance on LCP Section 13.20.061(A), your letter acknowledges that LCP Section 13.20.061(B)(4) precludes the exemption under 13.20.061(A) if the development is "located on property between the sea and the first through public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance." As explained above, the subject gate is both located within 300 feet of blue water and between the sea and the first public road paralleling the sea. Thus, the subject gate does not qualify for the exemption under LCP Section 13.20.061(A).<sup>5</sup>

You further suggest that "as the gate serves a private drive for FIVE (5) single family residences, not just 'an existing family residence,' it is unclear if Section 13250(b)(4) even applies to this situation. Given the above, Sections 13253(b)(4), 13253(b)(7) and 30604(c) would not apply either." Assuming your argument that the subject gate is not an improvement to 'an existing single-family residence,' then the subject gate does not qualify for the exemption specified in 13.20.061(a), which reflects and incorporates the relevant standards from 14 CCR Section 13250(a) and which only applies to improvements to 'an existing single-family residence.' Furthermore, your argument has no bearing on the applicability of 14 CCR Section 13253(b) (or the analogous provision in LCP Policy 13.20.062(B)) as those provisions already apply to an existing structure *other than* a single-family residence; likewise, your argument has no bearing on the applicability of 30604(c) because that provision simply requires that any CDP issued for development between the nearest public road and the sea shall include a finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. Whether the subject gate serves five single-family residences or one is wholly irrelevant to the applicability of 30604(c).

You also assert that Coastal Act "...Section 30211 cannot be applied without proof of an existing public right of access." Section 30211 states:

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

Section 30211 must be applied when considering a permit for the subject gate as it may, based on the evidence collected by the Commission to date, interfere with a public right of access to the sea. Commission staff has (as you acknowledge in your letter) heard numerous complaints from the public over many years about blocked access at Geoffroy Drive (related to both Violation File Nos. V-3-01-055 and V-3-18-0018). Many people have claimed historical use of Geoffroy Drive and the bluff trail to access the beach in a manner which appears to strongly support a finding of implied dedication for Geoffroy Drive and the bluff trail to access the beach in light of applicable legal standards regarding prescriptive rights. Since recent placement of the subject gate, we have received new complaints and testimony as to the public's use of Geoffroy

Exhibit 3

See also footnote 3 above

Drive and the bluff trail. There is strong evidence that the public has established a right of access through historic, continuous use of Geoffroy Drive and the bluff trail as if it were public land, with the actual or presumed knowledge of the owner(s) or their predecessors-in-interest but without asking for or receiving permission from said owner(s) and without significant objection or bona fide attempts by said owner(s) to prevent said use.

In addition, the Parks and Recreation and Public Facilities Element of the certified Santa Cruz County Land Use Plan ("LUP"), Policy 7.7.18, has long identified Geoffroy Drive as an Area Designated for Neighborhood Public Access.

Given Coastal Act and LCP policies that seek to maximize public access, this is a serious issue of concern with respect to the ability to find the subject gate consistent with the public access and recreational policies of Chapter 3 (including Section 30211) as required by Section 30604(c) of the Coastal Act. As we suggest in our letter to the County, the time, effort, and legal expense to formally resolve this issue through a quiet title action could possibly be avoided (or mitigated) when the HOA applies for a CDP for the subject gate by providing compensatory public access equivalent in time, place, and manner to the apparent prescriptive rights which the subject gate is now impeding (e.g., re-designing the gate to accommodate historic pedestrian access and by the placement of signage indicating public access). In any event, given the clear need to legally permit the subject gate and signs by CDP, and the compelling evidence we have collected to date supporting a finding of implied dedication of Geoffroy Drive and the bluff trail for public use to access the beach, as part of the CDP application for the subject gate the HOA will need to address the prescriptive rights issue vis a vis the HOA's "legal interest in all the property upon which work would be performed, if the application were approved..." (See 14 CCR Section 13053.5(b) and LCP Section 18.10.210(A)(2).)

Your letter to the County describes some of the long history and controversy surrounding the public's historic use of Geoffroy Drive and the bluff trail to access the beach. What is clear is that *there is* a long history here of public use and your letter acknowledges that. However, regardless of the public access history here, the subject gate and signs are non-exempt development that requires a CDP. Since these developments do not have a CDP, they are present (and blocking public access) in violation of the Coastal Act and the County's LCP.

#### Resolution

In some cases, violations involving unpermitted development may be resolved administratively by removal of the unpermitted development and restoration of any damaged resources. In other cases, such violations may be resolved by obtaining a CDP for "after-the-fact" authorization of the unpermitted development. As explained in this letter, we believe that the gate placed pursuant to Over Height Fence Certification No. 151297 requires a CDP and thus needs to be removed or, if not removed, authorized by a CDP. Any such CDP, if issued for the gate, would need to include at a minimum provisions for public access (e.g., pedestrian gate/signage) to Twin Lakes State Beach. Please submit to Santa Cruz County, by June 8, 2018,

a complete CDP application to authorize the subject gate and signs in a manner that respects historic public access and use or remove the gate and signs. Please contact me by **May 11, 2018** regarding how your clients intend to resolve this matter.

Thank you for your prompt attention to this matter. If you have any questions, or if I can be of assistance, please feel free to call me at 831.427.4885.

Sincerely,

N. Patrick Veesart

**Enforcement Supervisor** 

Northern Districts

cc: Kathy Molloy, Planning Director, Santa Cruz County

John Leopold, First District Supervisor, Santa Cruz County

Jeff Gaffney, Santa Cruz County Parks Director

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE 724 FRONT STREET, SUITE 300 SANTA CRUZ, CO 92069 PHONE (551) 427-4863 FAX (831) 427-1877 WEB WWW COASTAL CA GOV



June 1, 2018

Ira James Harris, Esq. P. O. Box 1478 Orinda, CA 94563

Re: Violation File No. V-3-18-0018 - Geoffroy Homeowner's Association ("HOA")

Dear Mr. Harris:

We are in receipt of your letter dated May 16, 2018, which we received on May 21, 2018. Please note that in our letter dated May 4, 2018, we asked for a response from the HOA by May 11, 2018. Your letter arrived in our office 10 days after that deadline.

In our letter to you dated May 4, 2018 we explained, in clear detail: 1) our authority to enforce the County's Local Coastal Program ("LCP"), notwithstanding the County's responsibility to implement it in the first instance; 2) why, pursuant to policies and standards in the LCP, the subject gate/fence is nonexempt development that requires a coastal development permit ("CDP"); and 3) why Over Height Fence Certification No. 151297 is not a CDP. Therefore, I see no reason to repeat all that here. However, to reiterate a key point which you do not acknowledge in your response, regardless of the validity of any entitlement obtained by your clients purely as a matter of *local* regulatory requirements (e.g., Over Height Fence Certification No. 151297), the subject gate/fence has not been authorized by a CDP and, thus, is unpermitted development that persists in violation of both the Coastal Act and the County's LCP.

#### Timing and Authority for the Commission to Require a CDP for the Subject Gate/Fence

You ask that we "enlighten" you as to the basis for "demanding" a CDP. As explained above, I believe that we already did that in our May 4, 2018 letter. You go on to assert that the Commission's actions in this matter were not timely. Please understand that if the County had issued a CDP, as is required, we would have received a Final Local Action Notice ("FLAN") from the County and that would have triggered a 10-day review period during which the CDP could have been appealed. However, since no CDP was issued, no notification was sent to the Commission when the County instead decided to exempt the subject gate/fence from CDP requirements. Thus, we were unaware of the gate/fence until we were contacted by Supervisor Leopold's office in November 2017 regarding same. There was some initial confusion as we thought the Supervisor's inquiry was in regard to the gate/fence on the bluff (discussed in our May 4, 2018 letter) for which we already had a violation file open. It took us some time to investigate the matter, understand that it was a new gate/fence under discussion, and contact County planning staff to determine if we had received a FLAN, and if not, why. After sorting through the sequence of events, including the County's permitting actions, we wrote a letter to the County, dated April 11, 2018, regarding the new gate/fence. To summarize, and to directly

address your concerns about the propriety of taking enforcement action with respect to your clients over two years after the County issued the Over Height Fence Certification – the Commission was not made aware of the County's decision to exempt the subject gate/fence from CDP requirements (nor do LCP procedures necessarily mandate such notification), but we can confirm to you that upon notification of the violation the Commission acted diligently to resolve the subject violation, as discussed above.

Regarding your specific concerns about the propriety of my citation to LCP Section 13.20.080, please note that reference to Section 13.20.080 (as well as Section 13.20.060, which incorporates 13.20.080 by reference) regarding the Executive Director's ability to challenge an exemption determination was for *illustrative* purposes as to the ability of the Commission (as an agency) to challenge the County's exemption determination, even though the County has the primary responsibility in the first instance to implement its LCP, including making CDP exemption determinations, as you are aware. We are not necessarily relying specifically upon Sections 13.20.060, 13.20.080, or any other provision of the LCP as the source of our authority to challenge the County's exemption determination.

Case law is clear that LCPs and CDPs issued by local governments are not solely a matter of local law, but also state policy. Thus, the Commission has ultimate authority to ensure local government action conforms to the Coastal Act. (See Pratt v. Cal. Coastal Com'n (2008) 162 Cap. App.4th 1068, 1075 ["Although local governments have the authority to issue coastal development permits, that authority is delegated by the Commission. The Commission has the ultimate authority to ensure that coastal development conforms to the policies embodied in the state's Coastal Act. In fact, a fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government."].)

We all know that anytime owners of beachfront properties do anything that affects public access to the beach, we (and local governments) receive many complaints regarding same. As you correctly point out, that has long been true for Geoffroy Drive. Thus we have an expansive record of public use of Geoffroy Drive to access Twin lakes State Beach/Black's Beach that spans many years. When your clients' CDP application for the gate/fence is received, Section 30211 requires that public access acquired through use be considered when processing that application. It is through that process that the issues you raise regarding public use will be addressed; thus, the importance of processing that CDP application in a timely manner, as required by both the Coastal Act and the LCP. If, however, it becomes necessary to "file an action seeking to establish a prescriptive right," we are prepared to take actions necessary to preserve the public's right to access based on the record evidence. I will say here that your assertion that the current blockages of public beach access at Geoffroy Drive predate the Coastal Act does not appear to be correct - as evidenced by the many public complaints/comments (which you acknowledge), the permitting and violation history, and the fact that Geoffroy Drive is designated in the certified (i.e. post Coastal Act) Santa Cruz County Land Use Plan as a "Neighborhood Public Access."

### Applicability of Vested Rights and Equitable Estoppel Here as Against the Commission

You go on to express your opinion that the HOA has a vested right to the subject gate/fence and that the Commission is estopped from requiring a CDP for the gate/fence. The concepts of vested rights and estoppel are not applicable to the subject gate/fence with respect to the Commission. In fact, your reliance on Santa Monica Pines Ltd. v. Rent Control Board (1984) 35 Cal.3d 858 ("Santa Monica Pines"), Monterey Sand Co. v. Cal. Coastal Com'n (1987) 191 Cal.App.3d 169 and HPT IHG-2 Properties v. City of Anaheim (2015) 243 Cal.App.4th 188 ("HPT IHG-2") actually supports our position, rather than yours.

For example, HPT IHG-2 states: "Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (243 Cal.App.4th at 201.)

None of the required four elements are present here with respect to the Commission. First, as explained above, the Commission was not apprised of the fact that the County exempted the subject gate/fence from CDP requirements until Supervisor Leopold's office contacted us in November 2017, at which time we acted diligently to resolve the violation. Second, the Commission did not act in any way to suggest to your clients that the gate/fence was exempt from CDP requirements. Third, notwithstanding that the County issued the Over Height Determination, your clients were not ignorant of the true state of facts, as at no point did the Commission indicate acquiescence to the County's exemption determination, and your clients could have discerned through the County Code that an Over Height Determination is not a CDP and that the Commission has the authority to challenge the County's implementation of its LCP. Finally, your clients have not relied upon any conduct by the Commission to their injury; our current position is not that the Over Height Determination is invalid, but simply rather that under the Coastal Act and the LCP your clients must obtain a CDP to fully, legally authorize the subject gate/fence, notwithstanding any validity of the County's issuance of the Over Height Determination.

More generally, estoppel is not relevant in the situation, as here, where the Commission is simply exercising its prosecutorial discretion to correct a violation which it heretofore had not prosecuted. (See Feduniak v. Cal. Coastal Com'n (2007) 148 Cal. App.4th 1346 ["the mere failure to enforce the law, without more, will not estop the government from subsequently enforcing it"]; see also Siskiyou County Farm Bureau v. CDFW (2015) 237 Cal. App.4th 41 ["past non-enforcement does not necessarily reflect a formal administrative interpretation precluding enforcement, but could instead reflect the exercise of prosecutorial discretion or limited resources"].)

On the issue of vested rights, Santa Monica Pines states: "It is well established that the rights which may 'vest' through reliance on a government permit are no greater than those specifically

granted by the permit itself." (35 Cal.3d at 866.) The locally-issued Over Height Determination does not purport to authorize the development <u>under authority of the Coastal Act or LCP</u>. We are not disclaiming your client's right to rely on the Over Height Determination for the subject gate/fence as a matter of the local entitlement process. As explained above, determination of whether a CDP was required under the Coastal Act and the LCP is a wholly separate and distinct issue from entitlement requirements under purely local regulatory processes. (*See, again, Pratt v. Cal. Coastal Com'n, 76* Cal.Rptr.3d 466.) Coastal Act and LCP requirements for a CDP to pursue development in the Coastal Zone (as is the case here) were clearly in place at the time your clients installed the subject gate/fence, so your clients cannot claim a "vested right" to the gate as predating the Coastal Act or LCP requirements to obtain a CDP for development.

Again, whether you agree or disagree with our determination that the County improperly exempted the gate from CDP requirements does not make the concepts of "estoppel" or "vested rights" applicable to the Coastal Commission just because your clients have benefitted from unpermitted development for a number of years before Commission Staff became aware of the violation and acted diligently to resolve the violation.

### Your May 31, 2018 Correspondence

This morning we received another letter from you, faxed late last night. I believe that the issues you raise in that letter are addressed in this letter. However, you conclude your letter by suggesting that we meet to discuss "resolving this dispute short of full blown litigation." We certainly would like to avoid litigation if we can and are happy to meet with you and your clients to that end. You also indicate that your clients are willing to "unlock" the gate from 8:00 a.m. to 5:00 p.m. and provide "permissive access." However, you correctly point out that the bluff-top gate/fence is still extant and that it blocks public access to the beach below. Really, unlocking the gate without signage and beach access will accomplish very little. It is through the CDP process that access, signage, and hours of operation would be analyzed and decided. At this point, your offer, while appreciated, is not an interim solution to the identified problem. Short of removing both gates/fences and restoring public beach access, to begin resolving the violation your clients must submit a CDP application to permit the subject gate/fence. As for penalties, Commission staff cannot per se 'toll' your clients' exposure to administrative civil penalty liability under 30821 for public access violations because ultimately the Commission, not staff, is the decision maker with respect to any imposition of penalties. However, Commission staff determines whether to recommend imposition of such penalties as well as recommend amount of such penalties supported by the record evidence. Furthermore, staff's recommendations with respect to these issues will be informed, in part, by how you and your clients choose to proceed considering the circumstances and information for which you have been put on notice at this time. Therefore, please proceed accordingly.

#### Conclusion

The State and/or County have long required maximum public access in the Coastal Zone. Section 30211 of the Coastal Act requires that development not interfere with public access where acquired through use (as is the case here) or legislation. As explained in this letter and other correspondence, we believe that the gate placed pursuant to Over Height Fence Certification No. 151297 needs to be removed or authorized by a CDP. Moreover, any such CDP, if issued for the gate, would need to include, at a minimum, provisions for public access (e.g., pedestrian gate/signage) to Twin Lakes State Beach/Black's Beach. Therefore, your clients must submit a complete CDP application to Santa Cruz County seeking authorization for the subject gate/fence by July 2, 2018, or remove the gate/fence. Please contact me by June 15, 2018 regarding how your clients intend to address this matter.

Thank you for your prompt attention to this matter. If you have any questions, or if I can be of assistance, please feel free to call me at 831.427.4885 (my direct line). If you would like to arrange a date/time to meet and discuss these issues, give me a call or email me with some dates that would work for you and your clients. I am at: pat.veesart@coastal.ca.gov.

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N. Patrick Veesart

Enforcement Supervisor

Northern Districts

cc: Kathy Molloy, Planning Director, Santa Cruz County

John Leopold, First District Supervisor, Santa Cruz County

Jeff Gaffney, Santa Cruz County Parks Director

# CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE TAS FRONT STREET IN SERVE 300 NANTA CRUZ, CA 9506 J. PHONT (83 1-127-486). LAX (831)-427-4872. WEB. WWW.COASTAL CA GOV.



June 29, 2018

Ira James Harris, Esq. P. O. Box 1478 Orinda, CA 94563

Re: Violation File No. V-3-18-0018 - Geoffroy Homeowner's Association ("HOA")

Dear Mr. Harris:

We are in receipt of your fax cover sheet (with note) and faxed letter dated June 14, 2018. Thank you. I'm sorry to hear that you had problems with the fax transmission and legibility of our letter to you dated May 4, 2018. If that should occur again, please call me and I will make sure that you get a legible letter quickly. That way we can avoid unnecessary delays.

In your June 14, 2018 letter you seem to be re-asking questions already asked and answered and re-stating statements previously addressed, but we will try again to address what seem to be the main points you raise.

# I. Authority of the Commission to Challenge the County's Exemption Determination

In your letter you state the following:

"While the Coastal Commission clearly had a right to challenge the Local Agency's exemption determination, it failed to do so ... You seem to believe that the Local Agency's failure to provide any Final Local Action Notice ('FLAN') somehow preserves your right to contest its decision, but fail to recognize that no such requirement is set forth by State Law or through the Local Coastal Plan that the Commission certified. Instead the exemption determinations were left to the discretion of the Local Agency, who must solicit the Commission's input. See, Santa Cruz Municipal Code Section 13.20.080. The fact that the Commission failed to setup a notification procedure or inquire of the County regarding its exemption decisions, does not thereby authorize the Commission to attack any and all such decisions whenever it thereafter chooses. If you believe legal authority exists for such action, please recite me to that precedent."

Please be advised that the entire purpose of a FLAN is to provide notice as to a local agency's decision so that interested parties (including the Commission) can become aware of the local agency's decision and determine whether to file an appeal or not. In the absence of receiving a FLAN, there is no way for the Commission to know that the County has taken an action, such as issuing an exemption determination. However, the fact that FLANs are not issued for exemption determinations under the County's LCP does not deprive the Commission of

jurisdiction to challenge the exemption determination. As you yourself admit, "...the Coastal Commission clearly had a right to challenge the Local Agency's exemption determination..." Yet you allege that the absence of a FLAN (the entire purpose of which is, again, to provide notice of the local agency's action) has no bearing on the Commission's lack of actual notice of the exemption determination for over a year after issuance of the exemption determination. While Santa Cruz County Code Section 13.20.080(B) is structured in a manner to allow the County to solicit Commission concurrence as to an exemption determination, the Commission's independent authority to remedy violations of the Coastal Act, including the County's LCP, does not derive from the County's LCP. We have provided you numerous illustrative citations of the Commission's inherent authority to ensure compliance with the Coastal Act, even when a certified LCP is in place.

As stated in *Pratt v. Coastal Com'n* (2008) 162 Cal.App.4th 1068 ("*Pratt*," cited in our June 1, 2018 letter):

"Although local governments have the authority to issue coastal development permits, that authority is delegated by the Commission. The Commission has the ultimate authority to ensure that coastal development conforms to the policies embodied in the state's Coastal Act. In fact, a fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government. [Citation omitted.] The Commission applies state law and policies to determine whether the development permit complies with the LCP." (Pratt, 162 Cal.App.4th at 1075 (emphasis added).)

In fact, *Pratt* cites to 30519(a), as your letter does, for the same proposition for which you cite 30519(a): "Once the Commission certifies the LCP and all implementing actions become effective, the Commission's authority over coastal development permits is 'delegated to the local government...' (§ 30519, subd. (a).)" (ld.) However, the court then importantly states: "Finally, the Commission has appellate jurisdiction to determine whether the development permit issued by the local government is consistent with the LCP and coastal access policies. (§ 30603, subd. (b).)" (ld. (emphasis added).)

The *Pratt* court's citation to 30603(b) is simply another example of the Commission's authority to review decisions made by local governments pursuant to their certified LCPs. Sections 30809(a) and 30810(a) similarly illustrate the Commission's authority to review decisions made by local governments in the enforcement context and are directly applicable here. Section 30809(a) states that:

"If the executive director determines that any person or governmental agency has undertaken or is threatening to undertake, any activity that (1) may require a permit

<sup>&</sup>lt;sup>1</sup> In your letter you incorrectly reference the "Santa Cruz Mumcipal Code" Section 1-01.020 of the Santa Cruz County Code states. "This code shall be known as the Santa Cruz County Code and it shall be sufficient to refer to it as the Santa Cruz County Code in any prosecution for any violation of any its prohibitions or offenses or in any proceeding at law or in equity."

from the commission without securing a permit ... the executive director may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program ... under any of the following circumstances: (1) The local government ... requests the commission to assist with, or assume primary responsibility, for issuing a cease and desist order. (2) The commission requests and the local government ... declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources. (3) The local government ... is a party to the violation." (emphasis added)

Section 30810(a) allows the Commission to issue an order under similar circumstances.

To be absolutely clear, the fact that the County issued an exemption determination (which the Commission did not in fact become aware of until over a year after issuance) does not preclude the Commission from enforcing the requirements of the Coastal Act (including the LCP) where we have determined that an exemption determination was improperly issued and unpermitted development has occurred, thus constituting a violation of the Coastal Act. (Again, See Pub. Res. Code §§ 30809(a), 30810(a).)

# II. <u>Inapplicability of Estoppel and Vested Rights to the Commission's Enforcement of the Identified Violation</u>

As previously mentioned in our June 1, 2018 letter, the lack of past enforcement of these Coastal Act violations does not preclude us from enforcing these violations now. To quote the relevant portion of our letter in full:

"More generally, estoppel is not relevant in the situation, as here, where the Commission is simply exercising its prosecutorial discretion to correct a violation which it heretofore had not prosecuted. (*See Feduniak v. Cal. Coastal Com'n* (2007) 148 Cal.App.4th 1346 ["the mere failure to enforce the law, without more, will not estop the government from subsequently enforcing it"]; *see also Siskiyou County Farm Bureau v. CDFW* (2015) 237 Cal.App.4th 41 ["past non-enforcement does not necessarily reflect a formal administrative interpretation *precluding* enforcement, but could instead reflect the exercise of prosecutorial discretion or limited resources"].)"

Feduniak v. Constal Com'n (2007) 148 Cal. App.4th 1346 ("Feduniak") is particularly relevant here. In that case the Sixth District Court of Appeal recognized that:

"...the Commission issues approximately 1,000 permits per year, and the relatively small size of the enforcement staff and budgetary constraints make it impossible to monitor compliance on every property subject to permit conditions. Rather, as a practical matter, investigative and enforcement resources are focused where problems

are more likely to arise or exist: properties where the conditions were challenged or resisted and properties about which they receive complaints. (*Id.* at 1363.)

Your clients' matter falls within this latter category of cases for which Commission staff focuses enforcement resources: properties for which we have received complaints of possible violations.

The bottom line is that you have provided no authority for your proposition that the County's exemption determination is insulated from Commission review, even though the Commission was not in fact aware of the exemption determination until over a year after issuance - at which point the Commission acted immediately and diligently to enforce the violation. Furthermore, you have made no attempt to address any of the legal authorities cited to in our June 1, 2018 letter. Your preferred outcome would result in bad public policy because if the County had issued a CDP for the same development, it would clearly be appealable because it is between the sea and the first public road paralleling the sea (see Pub. Res. Code § 30603(a)(1)), but under your reasoning, by exempting the same development from a CDP requirement, the Commission has no authority to review the County's decision. This result would encourage local governments to simply issue exemptions for otherwise appealable development to insulate them from Commission challenge, thus incentivizing local governments to avoid following the proper process for development subject to Coastal Act permitting requirements.

Your letter goes on to state: "The improvement undeniably constitutes a vested property right which cannot now be taken without just compensation."

We addressed your vested right argument on pages 3 to 4 of our June 1, 2018 letter. To summarize, Santa Monica Pines Ltd. v. Rent Control Board (1984) 35 Cal.3d 858 ("Santa Monica Pines") – a case to which you cited which actually supports our position – states: "It is well established that the rights which may 'vest' through reliance on a government permit are no greater than those specifically granted by the permit itself." (Santa Monica Pines, 35 Cal.3d at 866.) Again, the locally-issued Over Height Fence Certification does not purport to establish any rights under authority of the Coastal Act or LCP. Thus, the Over Height Fence Certification does not constitute a vested right as that concept relates to Coastal Act permitting requirements. We have no position on whether your client's locally-issued Over Height Fence Certification constitutes a vested right in relation to application of any purely local County regulatory requirements.

Furthermore, as explained in our June 11, 2018 letter, we are not attempting to "take without just compensation" your client's Over Height Fence Certification. Our determination that placement of a gate constitutes development requiring a permit under the Coastal Act/LCP does not deprive your clients of any property interest any more than notice that placement of the gate triggers some other regulatory requirement under a body of law separate from that which authorized the Over Height Fence Certification. Please provide legal authority for your assertions that: (1) placement of the gate in reliance on the Over Height Fence Certification constitutes a vested right for purposes of the Coastal Act; and (2) our determination that

placement of the gate requires a CDP under the Coastal Act/LCP constitutes a taking of property without just compensation.

Your letter also states:

"You claim that the Commission cannot be estopped by the actions of the Local Agency, but fail to recognize that the Local Agency (by certification of the LCP) effectively became the Commission's delegate agent for such decisions. The Commission is thereby barred by the acts and decisions of its agents as well as itself in failing to require any further notifications or requirements for exemption determinations."

Your assertion that by virtue of having a certified LCP a local government has become the Commission's "delegated agent" for any and all of the local government's decisions made under authority of the LCP (no matter how baseless or lacking in authority) such that the Commission is estopped from taking action to correct the local agency's erroneous actions has no legal basis and, again, would result in bad public policy. In fact, the *Feduniak* court expressly rejected this proposition. In that case, the plaintiffs argued that a county-issued CDP (following LCP certification) should have put the Coastal Commission on notice of inquiry regarding conflict of that CDP with a violation relating to a condition of a CDP previously issued by the Commission for the same property. The *Feduniak* court held:

"...the county's finding of no violation cannot be attributed to the Commission because the county acted independently of the Commission and not as its agent for purposes of approving coastal development. As noted, upon certification of its local coastal program, the county replaced the Commission as the permitting agency for coastal development. The Commission's function thereafter was to review decisions by the county that were appealed. Thus, the county's finding cannot be deemed a representation, albeit erroneous, by the Commission to the [plaintiffs]..." (Id. at 1366 (emphasis added).)

As illustrated by *Feduniak*, contrary to your assertion, the Commission is not estopped by the County's actions due to any purported status of the County as the Commission's "delegated agent." This legal point also relates to your argument that the Commission has no jurisdiction to enforce the requirements of the Coastal Act (including the County's LCP) simply because the County has a certified LCP. *Feduniak* illustrates that estopped will not be applied to the Commission simply because it seeks to enforce the requirements of the Coastal Act (including those of an LCP) within an area with a certified LCP. (Again, See Pub. Res. Code §§ 30809(a), 30810(a).)

Furthermore, we previously explained the four elements generally applicable to the doctrine of equitable estoppel: "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (HPT IHG-2 Properties v. City of

Analicim (2015) 243 Cal.App.4th 188 ("HPT"). On page 3 of our June 1, 2018 letter we explained how none of the required four elements are present here to estop the Commission from taking enforcement action to correct the County's erroneous decision to issue an exemption determination. It is not apparent to us how the Commission's certification of the County's LCP renders the County a "delegated agent" for purposes of the four referenced estoppel elements with respect to the County's decision to issue an exemption determination. Please explain how the four referenced estoppel elements identified in HPT are satisfied here.

It is worth noting that regarding the first element (the party to be estopped must be apprised of the facts), the court in *Feduniak* declined to impute constructive knowledge on the Commission in that case where the plaintiff/violator undertook development pursuant to a locally-issued CDP within an area with a certified LCP that was in violation of a condition of a CDP previously issued by the Commission before LCP certification. The court specifically stated: "...we have found no authority suggesting that the Commission has a statutory duty to inspect all properties for compliance with conditions after a permit has been issued, let alone a duty to do so on an ongoing basis for as long as the permit is applicable." (*Feduniak*, *supra*, 148 Cal.App.4th at 1363.) If the courts are unwilling to impute knowledge on the Commission for violations relating to a CDP issued by the Commission itself to support an estoppel claim, it seems highly unlikely that the Commission would be imputed knowledge to support an estoppel claim where, as here, the Commission did not receive actual notice of the violation until over a year after the violation occurred.

### III. History of Public Use at the Subject Property

In your letter you also state that "...we continue to be taken aback by the Commission's vague and unsupported recital to a record of 'historic public usage' as the Commission's own records reveal exactly the opposite." Please indicate where exactly in the Commission's own records it is revealed that there is no record of historic public usage at Geoffroy Drive.

Finally, you end your letter by citing LT-WR, LLC v. California Coastal Commission (2007) 152 Cal. App.4th 770 ("LT-WR"), a case involving gates blocking an inland trail in the Santa Monica Mountains. LT-WR states: "...the trial court erred as a matter of law in ruling the gates and signs are not 'development' within the meaning of Public Resources Code section 30106. We conclude the gates and signs are 'development' within the meaning of the statute so as to require a development permit..." (Id. at 805.) Thus, as in LT-WR, the gates placed on your clients' property clearly constitute development for which a CDP is required under the Coastal

<sup>&</sup>lt;sup>2</sup> It is also worth noting that. "Estoppel against the government requires an additional finding not required against a private party flere the court also had to find that (1) estopping the Commission—would not nullify a strong rule of policy adopted for the public's benefit and (2) the injustice to the [party asserting estoppel] without estoppel outweighs, and therefore justifies, any effect upon public interest or policy that results from estopping enforcement of the Commission's orders" (*Feduntak, supra.* 148 Cal App.4th at 1372) Because even the four basic elements of estoppel cannot be satisfied here, it is not necessary to engage in an extended discussion of these additional elements required to find estoppel against a government agency. However, we invite you to include these additional elements in your justification as to why the elements of estoppel apply in your clients' situation

Act (the County's LCP). *LT-WR* does go on to state: "The Commission's denial of a permit for the gates and signs, premised on the existence of 'potential' prescriptive rights, was speculative and properly was overturned by the trial court." (*Id.* at 806.) However, *LT-WR* is distinguishable from the present situation because the gates in *LT-WR* were not located between the first public road and the sea and did not block access to the sea. Thus, Section 30211 was not applicable in *LT-WR*, as it is at Geoffroy Drive, nor was Section 30211 considered in the permit action or judicial decisions. What *LT-WR* makes clear is that gates and signs are "development" that requires a CDP.

# Conclusion

The State and/or County have long *required* maximum public access in the Coastal Zone. Section 30211 of the Coastal Act *requires* that development not interfere with public access where acquired through use (as is the case here) or legislation. As previously explained, we believe that the gate purportedly placed pursuant to Over Height Fence Certification No. 151297 needs to be removed or authorized by a CDP. Moreover, any such CDP, if issued for the gate, would need to include, at a minimum, provisions for public access (e.g., pedestrian gate/signage) to Twin Lakes State Beach/Black's Beach. As we have repeatedly indicated, your clients must submit a complete CDP application to Santa Cruz County seeking authorization for the subject gate/fence. As of the date of this letter, no such CDP application has been forthcoming; the subject gate/fence/signage remains in violation of the Coastal Act and the County's LCP, and impacts to public access are ongoing.

Please let me know, by July 13, 2018, if your clients intend to apply for a CDP or if we will need to address this matter through other means including formal enforcement action as detailed in our previous letters. Again, if you and your clients would like to meet to discuss these issues, please propose some date that would work for you. Thank you for your time and attention to this matter.

Sincerely,

A. Patrick Vecsart

Enforcement Supervisor

Northern Districts

CCI

Kathy Molloy, Planning Director, Santa Cruz County John Leopold, First District Supervisor, Santa Cruz County

Jeff Gaffney, Santa Cruz County Parks Director

### Nathan MacBeth

From: Elijah Mowbray <elijahmowbray@gmail.com>

Sent: Tuesday, October 27, 2020 7:47 PM

To: Nathan MacBeth

**Subject:** Development Application 201302, 70 Geoffroy Dr.

\*\*\*\*CAUTION:This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.\*\*\*\*

Nathan,

I am writing with regard to Development Application 201302, for parcel no. 028-143-35, located at 70 Geoffroy Drive.

As you know, this is an application to recognize the work completed under a County issued Emergency Permit. A few questions for you at this time:

- (1) Can you provide any additional information? Such as access to the "emergency" plans and the current plans, as well as any owner submitted information in support of their request? As a very interested member of the public, as well as a registered professional civil engineer, it feels as if this project is seriously flawed. Moreover, it is not seeing the light of day in terms of public notice and discussion. And it is hard to provide useful, accurate comments without the benefit of reviewing the plans.
- (2) Does the County Intend to hold any type of public hearing on this project? I am fairly sure you understand the high level of interest in this project. I hope this fact encourages the County to engage the community. We want public access restored and the County should take the lead on how this will be accomplished.
- (3) What is the timeline for this project to reach a decision point? Any schedule related information is appreciated, even estimates.

It is my understanding that this property owner is the same person who forcibly removed public access in 2002 or 2003. I know for a fact that we used to move freely between Black's and the Cove via this exact location when I was growing up on 14th Ave in the 1970's and 1980's. As such, unless they include proper recognition and support of public access (per your LCP), I strongly oppose the approval of any permits or applications associated with any of the properties who live on the "private" portion of Geoffroy Drive.

Please let me know about my questions - and it would be greatly appreciated if you would keep me informed to the extent feasible on any information developments related to this application as well as any other pertaining to public access. Thanks!!

ELIJAH MOWBRAY (831)419-9399 elijahmowbray@gmail.com

## **Nathan MacBeth**

From:

Dority, Doug <doug.dority@cepheid.com>

Sent:

Thursday, October 29, 2020 4:44 PM

To:

Nathan MacBeth

Cc:

Graeven, Rainey@Coastal; John Leopold; Sheila Branon (Sheila.Branon@parks.ca.gov);

Matt Johnston; frcpup@comcast.net; Dority, Doug

Subject:

Comments on Application 201302 (70 Geoffroy Drive Bluff Retention Structure)

**Attachments:** 

IMG\_1431.jpg

\*\*\*\*CAUTION: This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.\*\*\*\*

Nathan MacBeth Santa Cruz County Planning Department 701 Ocean Street, 4<sup>th</sup> Floor Santa Cruz, CA 95060

Hi Nathan,

In Regards to Application 201302, please include me on the noticing list.

I fully endorse/concur with Rainey Graeven's comments on the proposed Bluff Retention Project (Application 201302) that she sent you on October 23.

There has been a continued effort by the group of homeowners at the end Geoffroy to illegally 'privatize' their coastal access, and prevent the access of others. Not only have they erected an un-permitted and illegal gate, they have also put up signs, barbed wire, fencing, and other barriers with the clear purpose intimidated any one from accessing Twin Lakes State Beach from the bluff.

I live at 205 16<sup>th</sup> Avenue and have witnessed this for the past decade. Prior to this, I lived on 12<sup>th</sup> Avenue and would access Twin Lakes State Beach regularly, observing what has been going on in this area on my walks. It is interesting to me that one can walk all of the way from Long Marine Lab on the West Side to beyond Moss Landing, within view of the ocean (at low tide) except for at **one point** where you are forced to walk on streets and sidewalks. That **one point** is the bluff at Black's Beach and Geoffroy Drive.

The bluff slipped because the owners had some years ago illegally filled the area to create a larger driveway and parking area, and then added irrigation. When the drainage failed, it caused the overflow to undermine the unstable boundary between the natural bluff stone and the fill that had been illegally added. In my opinion, the slope of the bluff face can be made more gentle by eliminating the larger driveway and a simple path running diagonally on that slope (From the utility pole up top) can be put in to allow access to the public and the residents of the Sunny Cove Neighborhood.

The owners have shown a pattern of ignoring the coastal commission and avoiding legally required permitting, and have been cited for numerous violations. It is not just this owner who is responsible for what is going on. The cluster of homes built a rolling gate, a keypad gate with supporting hardscaping. The sole purpose of these structures is to intimidate access to the area, by suggesting that if you did, some sort of trespass is going on. The gate was retracted for some time (after a demand by the Coastal Commission), but they could not resist and they closed the gate again (see .jpg above, Oct 28).

The Rolling Gate and keypad access Door and the masonry features that support them should be physically removed so they no longer have that option. There is no longer 'benefit of the doubt' that should be bestowed after the demonstrated and repeated contempt for the public access rights.

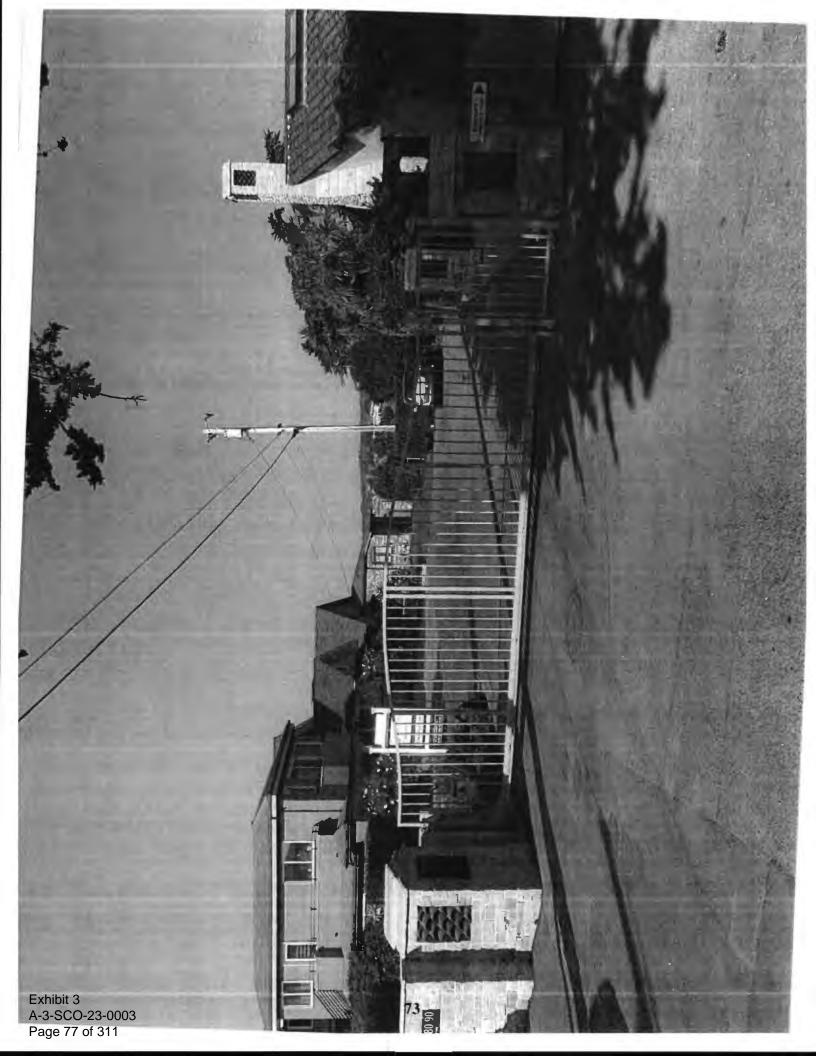
My question to my neighbors is- If you don't want people trying to get to the beach through public access rights-don't buy a property right at the beach or bluff where access has been established? Are you going to complain about noisy seagulls next? The gating-off of the bluff is all about Vanity and not about Security. If Sunny Cove Neighbors regularly use their access to Twin Lakes Beach via the bluff, the security of those homes their will be improved, and not diminished.

I would like to appeal to my neighbors on Geoffroy to take a different approach- create a low key and unimposing entry to a simple path that leads down the slope and to the beach. Put up a pole with doggy-doo bags to re-enforce and encourage your neighbors to use this access. You will find that far more neighbors will use this access than strangers, and most of you will also benefit from this access as well. There are plenty of examples of access points (Like this one) to Twin Lakes State Beach and other Santa Cruz beaches that are pretty much only frequented by locals. I would commit \$25K to support these improvements if these homeowners commit to making these changes and adopting a different attitude.

I look forward to future engagement with the Planning department and whomever else would like to contact me.

Doug Dority
205 16<sup>th</sup> Avenue
Santa Cruz, California
95062
415-246-2887
frcpup@comcast.net or doug.dority@cepheid.com

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### Law Offices of

# IRA JAMES HARRIS

October 29, 2020

Via E-mail: Nathan.MacBeth@santacruzcounty.us

Nathan MacBeth Santa Cruz County Planning Department 701 Ocean Street, 4<sup>th</sup> Floor Santa Cruz, CA 95060

Re: Response to Rainey Graeven's October 23, 2020 Commentary

Application 201302 – 70 Geoffroy Drive

**Emergency Bluff Restoration** 

Our File No. 1142.1

Dear Mr. MacBeth:

Please be advised that this office represents the applicants, Mark and Suzanne Cauwels, the owners of 70 Geoffroy Drive, Santa Cruz, California APN 028-143-35. Please direct all further communication regarding the processing of this application to my attention.

As you no doubt know, this application follows a permitted emergency like-kind repair, which was completed in early August 2020. I am in receipt of a copy of Rainey Graeven's October 23, 2020 letter purporting to belatedly "comment" on the above referenced application. I presume from her introductory paragraph that the County solicited input from the California Coastal Commission (hereinafter as the "COMMISSION"). When was this input solicited? Was that done pursuant to Santa Cruz Municipal Code 13.20.080 (B)?

Ms. Graeven disengenuously claims that "open" enforcement actions exist as it relates to this property and that those purported violations involve a purported "historic prescriptive right of public access" between Blacks Beach and the end of Geoffroy Drive through 70 Geoffroy Drive. That is not only blatantly false it is clearly undermined by the COUNTY'S and COMMISSION'S own records!

### THE ALLEGED EXISTING BASELINE LACKS FACTUAL OR LEGAL SUPPORT:

Development of the lots and the private drive on Geoffroy all pre-date the California Coastal Act. The Cauwels have written and photographic evidence supporting the fact that a (keyed and private) gated fence existed at the top of the bluff barring access down the northeastern slope for well over 50 years. [See, Exhibit 1 RFJN A - 000013-14 and Exhibits 3 and 4].

# 1. Alleged Violation No. V-3-01-055:

Despite the above, since at least 1986 the COUNTY through the County of Santa Cruz Planning Department (hereinafter as "Local Agency") and the COMMISSION have received periodic unsupported complaints by certain members of the public about a "blocked access" down some unspecified section of the bluff at the end of Geoffroy Drive. [See, Exhibit 2 RFJN B - 000001-3 and 000007]. On each occasion the Local Agency and/or COMMISSION failed to identify the exact location or require any specific access other than a dedication of the sandy beach portion below the bluff and seawall from 60 Geoffroy as part of V-3-01-055 as identified in Exhibit 1 RFJN A - 000002-3: choosing instead to refer members of the public to their right to bring a lawsuit to perfect any prescriptive easement claimed. [See, Exhibit 2 RFJN B - 000004 and Exhibit 5 RFJN E - 000011-12 and 000023, Findings 2 and 4]. It did so because of (amongst other things) the long history of the lack of public access along that slope. See. Exhibits 3, 4 and 9. The V-3-01-055 violation related to 60 Geoffroy Drive (not 70 Geoffroy Drive) and was clearly resolved through the required dedication in Exhibit 1 RFJN A - 000003 and 000014. I personally subpoenaed the COMMISSION's files on this 1986 Violation in 2010 and it was completely empty!

When complaints arose, once again, in 1997 and 2009-2010, the Local Agency investigations reconfirmed that no public access existed along the northeastern slope or if it had existed at all, it had been closed for decades, and the complaint files were closed (and once again resolved)! [See, Exhibit 2 RFJN B - 000001-3 and 000007 and Exhibit 5 RFJN E - 000011-12].

No prescriptive easement action has ever been instituted and no one has responded to the Cauwels' Quiet Title claims herein. See, the Complaint to Quiet Title and for a Writ of Mandamus attached as Exhibit 6 RFJN G and the Entry of Default on any and all members of the Public as Exhibit 7 RFJN F.

Further, any action on said "alleged" violation (which pre-dated the Coastal Act) would be time barred. Such statutory violations have a one (1) year statute of limitations for any assessment of a penalty or forfeiture [Code of Civil Procedure Section 340] or a three (3) year statute for any other liability created by statute [Code of Civil Procedure Section 338]. Without any specific guidance by the Coastal Act such general statutes of limitation control. G.H.I.I. v. MTS, Inc. (1983) 147 Cal.App.3<sup>rd</sup> 256, 276. The COMMISSION has no authority to expand the limitation periods set by the legislature. Hittle v. Santa Barbara County Employees Retirement Ass in (1985) 39 Cal.3d 374, 387. As a result, if not resolved by Exhibit 1, the statute of limitations has long since lapsed on any such enforcement action.

# 2. Alleged Violation No. V-3-18-0018:

The Cauwels are one of the five property owners involved in the above-mentioned lawsuit [Exhibit 6 RFJN G] which Ms. Graeven conveniently fails to mention in her letter. The five properties extend down a paved 15-foot wide <u>private driveway</u> at the end of Geoffroy Drive. The right to access the private driveway that lies within the "EASEMENT" which is legally described in each of the title reports for the five properties as being Twenty Five (25) feet in width, is granted to each of the five properties.

From the end of Geoffroy Drive northwest of the private drive lie 90 Geoffroy (APN 028-143-29), 80 Geoffroy (APN 028-143-37), the applicant's lot at 70 Geoffroy, which then terminates at 60 Geoffroy (APN 028-143-34). To the east and down the bluff from the end of Geoffroy all the way to Blacks Beach at the end of 60 Geoffroy lies 63 Geoffroy (APN 028-143-44). One would have to trespass over 63 Geoffroy's rear acreage to get to the bluff leading up to 70 Geoffroy, then trespass across the easement serving all properties as well as the lots at 70, 80 and 90 Geoffroy to reach the public roadway.

After trespassers had broken into and burglarized 60 Geoffroy Drive in 2014, and in the process started a fire that gutted the house, Fowler Packing Company and the other four property owners inquired of the Local Agency regarding the possibility of installing an electric gate and other landscape improvements across the private driveway that serves their properties. The Local Agency was then imbued with authority to determine whether such projects were appealable, non-appealable or exempt as the Local Coastal Plan (hereinafter as "LCP") had been certified by the Commission. See, *Cal. Pub. Res. Code Sections* 30519 (a), 30500, 30600 (d) and Hagopian v. State of California (2014) 223 Cal.App.4<sup>th</sup> 349, 362-363.

Given preliminary comments from the County Planner, the homeowners proceeded to file an application [No. 151297] for a Coastal Development Permit and Over-Height Fence Certification as of October 20, 2015. The application included a detailed set of plans and specifications as well as a survey map. The Santa Cruz County Code (hereinafter as "SCCC") required the Planning Director to determine the project's status at the time of submittal or as soon thereafter as possible, and certainly before the permit was considered complete. See, SCCC Sections 13.10.525, 13.20.080 and 18.10.230. Here, the Local Agency properly processed the application: it requested additional information, posted the plans on the County Website, required the applicants to post the property with Notice of their development permit application, and solicited comments from any and all agencies involved.

After completing the above, the Local Agency approved the Development Permit and Over-Height Fence Certification on January 22, 2016, which approval was a necessary precursor to any application for a building permit. The Local Agency, exercising its discretion and delegated authority under the certified LCP, found the application exempt under Sections 13.20.060 and 13.20.061 which was posted on its website and later confirmed by their internal log.

In reliance on that determination, the applicants filed a Building Permit Application [No. B-161575] as of February 24, 2016 which was approved as of April 4, 2016 and proceeded to install an electric gate, fencing and landscape improvements at a cost in excess of \$175,000. All such improvements were inspected and finally accepted by the Local Agency in 2016.

The COMMISSION purportedly received a complaint from a member of the public in late 2017, inquired regarding the absence of a FLAN and were told that the County had found the application exempt. Despite that the COMMISSION threatened the County as well as each of the applicants with civil administrative penalties should they not remove the "unpermitted" improvements (including the fence at the blufftop that had existed since the late 1950's or early 1960's) or reapply for a Coastal

Development Permit through which the COMMISSION indicated a public access condition would be imposed!

While the Cauwels along with the other applicants on this gate project, obviously concerned about their exposure to civil administrative penalties, opted to remove the gate pending resolution of the dispute, they nonetheless proceeded with the above-mentioned complaint. Exhibit 6. The writ of mandamus sought against BOTH the County and the COMMISSION was granted by the Santa Cruz Superior Court on August 10, 2020. See, Exhibit 8 RFJN H. This decision disposed of Violation No. V-3-18-0018 and with it any right by the COMMISSION or the COUNTY to claim that said improvement violated the Coastal Act or needed to provide for public access through to or from Black's Beach.

As a result, there are no "existing" unresolved enforcement actions against this property! Ms. Graeven's claim that 13.20.170 requires resolution of these violation notices is patently false on its face.

# 3. The Alleged Baseline Lacks Factual Or Legal Support:

Given the above, there is no legal basis for Ms. Graeven's claims. The fence and locked gate at the blufftop predated the Coastal Act and has prevented public access for decades. This was known and resolved in 1986 as it relates to 60 Geoffroy Drive. While the COMMISSION and COUNTY have addressed vague claims from specific individuals to blockage of a trail somewhere along the end of Geoffroy for decades, they have never presented any evidence supportive of such a public prescriptive right. The barbed wire on top of the fence and restrictive signage has also existed for decades. These issues were all resolved in the complaint and Order granting the Writ Of Mandamus!

Ms. Graeven unbelievably claims that the applicant (or possibly one of the 5 property owners along this private driveway) had a security guard blocking or deterring public access. This is also patently false: all she had to do was check with the Chief of Police or Fire Chief as she would have found out that a Mark Woodward hired the security forces to protect his property against vandalism by gangs of teenagers who were regularly trespassing and vandalizing his properties. It had nothing whatsoever to do with the applicants or any alleged public access through the Geoffroy private driveway to Blacks Beach, which coincidentally was then hazardous as the slide had taken out the driveway and much of the bluff face.

#### THERE ARE NO PUBLIC RECREATIONAL ACCESS ISSUES.

Ms. Graeven proceeds to bootstrap the hearsay apparently contained in unsupported online questionnaires regarding vague public "memories" of periodic access somewhere along the slope at the end of Geoffroy Drive, into a conclusion that such rights not only existed and continue to exist, but that the bluff Restoration somehow adversely impacts these rights. Ms. Graeven cites to *LT-WR*, *LLC v. California Coastal Commission* (2007) 152 Cal.App.4<sup>th</sup> 770 but apparently failed to appreciate the holding in that case that indicated that public prescriptive rights do not exist until the Court finds sufficient evidence of such (neither the COMMISSION nor COUNTY have any right to unilaterally determine that such rights exist). See, *LT-WR*, *LLC at* pp. 805-806.

# THE BLUFF RESTORATION REPRESENTS A LIKE-KIND EMERGENCY REPAIR.

While Ms. Graeven appears to recognize that the bluff restoration stems from a storm drain inlet (that became blocked as a result of leaves and debris from a nearby tree on County property) as a result of five (5) days of heavy wind and rains over the Thanksgiving Holiday weekend in 2019; she fails to recognize that such falls within the definitions of "disaster" "emergency" and "structure" in SCCC 13.20.040. A "disaster" applies to "any situation in which the force or forces which destroyed a structure to be replaced were beyond the control of its owner." An "emergency" is defined as "a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services." Finally, contrary to Ms. Graeven's opinion, the storm drainage devices and adjacent driveway and curb clearly constitute structures as Chapter 13 expansively identifies a "structure" as "anything constructed or erected."

As no right of public access has been established across the private driveway and down the bluff slope off 70 Geoffroy, and none can be imposed by any condition on this Applicant (as such would have to involve all five properties), the like-kind repair or restoration of the slope cannot be said to adversely affect public access or public recreation.

#### CONCLUSION

The like-kind emergency repair or restoration of the private driveway atop the bluff [which presented an undeniable health and safety issue as it severely restricted the use and access to 70 and 60 Gcoffroy and risked further personal injuries and property damage if not repaired] the repair was clearly within *Public Resources Code Section 30610 (d)*. In addition, it represents a repair and/or maintenance activity that has "not resulted in the addition to, or enlargement or expansion of, the object of the repair..." within *Section 30610 (g)* as it is solely the replacement of a "structure ...destroyed by a disaster." Accordingly, the emergency authorization of this like-kind repair of the damage caused by a disaster is and was authorized without a Permit pursuant to Public Resources Code Section 30610!

In closing, as the applicant has no ability to provide public access or public recreational benefits, without securing such rights from the other four adjacent property owners across their respective properties, there is no reasonable nexus for any public access conditions on this application as suggested by Ms. Graeven.

Very truly yours,

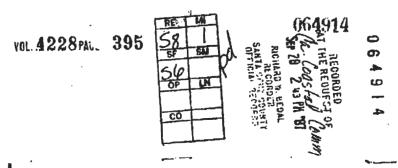
Law Offices of IRA JAMES HARRIS

Ira James Hairis

Ira James Harris

Attachments: Exhibits 1 to 9

cc Rainey Graeven — Rainey.Graeven@coastal.ca.gov
John Leopold — John.Leopold@santacruzcounty.us
Kathy Molloy — Kathy.Molloy@santacruzcounty.us
Matt Johnston — Matt.Johnston@santacruzcounty.us
Jeff Gaffney — Jeff.Gaffney@santacruzcounty.us
Sheila Branon — Sheila.Branon@parks.ca.gov



Recording Requested by and When Recorded, Mail To: California Coastal Commission 631 Howard Streat, 4th Floor San Francisco, California 94105 Attention: Legal Department

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IRREVOCABLE OFFER TO DEBICATE PUBLIC ACCESS EASEMENT

AND

#### DECLARATION OF RESTRICTIONS

6 THIS IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS EASEMENT AND 7 DECLARATION OF RESTRICTIONS (hereinafter "offer") is made this \_\_\_\_ of December . 19 86 . by LEO G. RAICHE & PATRICIA RAICHE (hereinafter referred to as "Grantor"). 10 WHEREAS. Grantor is the legal owner of a fee interest of certain real 11 \_, State of property located in the County of \_\_SANTA\_CRUZ\_ 12 California, and described in the attached Exhibit A (hereinafter referred to as 13 the "Property"); and 14 WHEREAS, all of the Property is located within the coastal zone as II. 15 defined in Section 30103 of the California Public Resources Code (which code is 18 hereinafter referred to as the "Public Resources Code"); and 17 WHEREAS, the California Coastal Act of 1976, (hereinafter referred to 18 as the "Act") creates the California Coastal Commission, (hereinafter referred 19 to as the "Commission") and requires that any coastal development permit approved by the Commission must be consistent with the policies of the Act set 21 forth in Chapter 3 of Division 20 of the Public Resources Code; and 22 IV. MMEREAS, 'pursuant to the Act, Grantor applied to the California Coastal 23 Commission for a permit to undertake development as defined in the Act within 24 the Coastal zone of \_\_SANTA CRUZ County (hereinafter the 25 "Permit"); and 26 MMEREAS, a coastal development permit (Permit No. 3-81-55A

STD. 112 LIEV. 6-72

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. 1986 by the Commission in was granted on \_ October 7 1 accordance with the provision of the Staff Recommendation and Findings, attached hereto as Exhibit B and hereby incorporated by reference, subject to 3 the following condition:

\*PRIOR TO TRANSMITTAL OF THE PERMIT, the landowner shall exexute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the mean high tide line to the toe of the bluff/or the toe of the existing seawall. The document shall be recorded free of prior liens which the Executive Director determines may affect theinterest being conveyed, and free of any other encumbrances which may affect said interest. Theoffer shall run with the land in favor of the People of the State of California, binding all successors and assigns, and shall be irrevocable for a period of 21 years, such period running from the date of recording."

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MMEREAS, the subject property is a parcel located between the first public road and the shoreline; and

WHEREAS, under the policies of Sections 30210 through 30212 of the California Coastal Act of 1976, public access to the shoreline and along the coast is to be maximized, and in all new development projects located between the first public road and the shoreline shall be provided; and WHEREAS, the Commission found that but for the imposition of the above VIII. condition, the proposed development could not be found consistent with the public access policies of Section 30210 through 30212 of the California Coastal Act of 1976 and the Local Coastal Program as defined in Public Resources Code Section 30108.6 and that therefore in the absence of such a condition, a permit could not have been granted;

COURT PAPER SYATE OF CALIFORNIA STD. 113 (REV. 8-72)

Exhibit 3

# VOL 422 JAGE 397

WHEREAS, it is intended that this Offer is irrevocable and shall constitute enforceable restrictions within the meaning of Article XIII. Section 8 of the California Constitution and that said Offer, when accepted, shall thereby qualify as an enforceable restriction under the provision of the California Revenue and Taxation Code, Section 402.1; NOW THEREFORE, in consideration of the granting of Permit No.3-81-55A to Grantor by the Commission, the owner(s) hereby offer(s) to

dedicate to the People of California an easement in perpetuity for the purposes of lateral public access and passive recreational use along the shoreline located on the subject property along the entire width of the property from the mean high tide line to the toe of the bluff/or the toe

and as specifically set forth by attached Exhibit C hereby incorporated by reference.

- 1. BENEFIT AND BURDEN. This Offer shall run with and burden the Property and all obligations, terms, conditions, and restrictions hereby imposed shall be deemed to be covenants and restrictions running with the land and shall be effective limitations on the use of the Property from the date of recordation of this document and shall bind the Grantor and all successors and assigns. This Offer shall benefit the State of California.
- 2. DECLARATION OF RESTRICTIONS. This offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist 25 on the Property.

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of the existing seawall.

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COURT PAPER

-3-

- 4. <u>CONSTRUCTION OF VALIBITY</u>. If any provision of these restrictions is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.
- 5. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions, exceptions, obligations, and reservations contained in this Offer shall be binding upon and inure to the benefit of the successors and assigns of both the Brantor and the Grantee, whether voluntary or involuntary.
- period of 21 years starting from the date of recordation. Upon recordation of an acceptance of this Offer by the Grantee, this Offer and terms, conditions, and restrictions shall have the effect of a grant of access easement in gross and perpetuity that shall run with the land and be binding on the parties, heirs, assigns, and successors. The People of the State of California shall accept this offer through the local government in whose jurisdiction the subject property lies, or through a public agency or a private association acceptable to the Executive Director of the Commission or its successor in interest.

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# VOL. 4228 PAGE 399

	<b>"</b>
1	Acceptance of the Offer is subject to a covenant which runs with the
2	land, providing that any offeree to accept the easement may not abandon it but
3	must instead offer the easement to other public agencies or private
4	associations acceptable to the Executive Director of the Commission for the
5	duration of the term of the original Offer to Dedicate.
6	Executed on this / day of December, 1986, at San Jose
7	. California.
8	Signed A Maik
9	Owner
10	LEO G. RAICHE
11	Type or Pyint -
12	Signed Total College
13	PATRICIA RAICHE
14	Type or Print
15	NOTE TO NOTARY PUBLIC: If you are notarizing the signatures of persons signing
16	on behalf of a corporation, partnership, trust, etc., please use the correct
17	notary acknowledgment form as explained in your Notary Public Law Book.
18	State of California. )
19	County of _Santa Clara)
20	On this <u>lat</u> day of <u>December</u> , in the year 1986,
21	before me Sandra A. Horn , a Notary Public, personally
22	appeared Leo G. Raiche & Patricia Raiche
23	personally known to me (or proved to me on the basis of satisfactory evidence)
24	to be the person(s) whose name is subscribed to this instrument, and
25	acknowledged that he/she/they executed it.
26	NOTARY PUBLIC IN AND FOR
27	SANDRA A. HORN SAID STATE AND COUNTY  NOTARY PUBLIC CALIFORNIA S

COURT PAPER
STATE OF GRADIES STATE OF GRADE OF G

# VOL. 422 SPAGE 400

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1	This is to certify that the Offer to Dedicate set forth above is
2	hereby acknowledged by the undersigned officer on behalf of the California
3	Coastal Commission pursuant to the action of the Commission when it granted
4	Coastal Development Permit No. 3-81-55A on December 23, 1986
5	and the California Coastal Commission consents to recordation thereof by its
6	duly authorized officer.
7	Dated: Need 26, 987
8	In Vaners
9	Staff Course
	California Coastal Commission
10	STATE OF California
11	San Francisco
12	COUNTY OF SAN FISHEISEO
13	On
14	a Notary Public, personally appeared John Solovice, personally known to
16	me to be (or proved to me on the basis of satisfactory evidence)
16	to be the person who executed this instrument as the street the street
17	and authorized representative of the California Coastal Commission and
18	acknowledged to me that the California Coastal Commission executed it.
19	<i>(</i> , , , )   0,0
20	Gary Lawrence Holloway
21	NOTATY PUBLIC -CALLEGRINA SAID STATE AND COUNTY  SAID STATE AND COUNTY
22	My Comm. Expires Oct. 25, 1989
23	
24	
~	

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#### EXHIBIT A

SITUATE in the County of Santa Cruz, State of California.

#### PARCEL ONE:

BEING a part of the lands conveyed to Joe L. Mcllo, et ux., by Deed dated September 12, 1951, recorded October 5, 1951 in Volume 841, Page 92, Official Records of Santa Cruz County and more particularly bounded and described as follows:

BEGINNING at a nail and tag, "R.C.F. 6270" set in a concrete footing on the Northern boundary of said lands conveyed to Mello from which a 3/4 inch iron pipe at the Eastern corner of the lands convoyed to Joe L. Mello, et ux., by Deed dated August 31, 1950, recorded October 20, 1950 in Volume". 795, Page 502, Official Records of Santa Cruz County bears North 83° 21' East 31.28 feet and South 64° 50' East 28.00 feet distant; thence from said point of beginning South 28° 14' West (at 20.65 feet a 3/4 inch iron pipe, at 139.61 feet a 3/4 inch iron pipe) to the Bay of Monterey; thence Northwesterly along the Bay of Monterey to the Southwestern corner of said lands conveyed to Mello, by Deed recorded in Volume 841, Page 92, Official Records of Santa Cruz County; thence along the Northern boundary of said last mentioned lands North 25° 10' East to an angle; thence North 68° 30' East 33.95 feet to a 3/4 inch iron pipe; thence North 68° 30' East 60.55 feet to a 3/4 inch iron pipe; thence South 81° East 64.20 feet to a 3/4 inch iron pipe; thence North 83° 21' East 8.63 feet to the place of beginning.

#### PARCEL TWO:

A right of way, appurtenant to Parcel One, for road and all public utility purposes, 25.00 feet in width, 12.50 feet on each side of the following described centerline:

BEGINNING at a 3/8 inch iron pipe on the Western boundary of the map entitled "Tract No. 57, Santa Maria Cliffs", Being a part of Section 20, T. 11 S. R. 2 W., M. D. M., Santa Cruz County, Calif.", filed for record in the office of the County Recorder of Santa Cruz County on March 11, 1947 in Map Book 28 at page 48, Santa Cruz County Records, from which the most Northern corner of Lot 22 as shown on said map bears South 25° 10' West 12.50 feet distant; thence from said point of beginning North 64° 50' West 98.18 feet; thence South 81° 52' West 25.00 feet to a point on the Southeastern boundary of the lands conveyed by Joe L. Mello, et ux., to Vincent J. Coates, et ux., recorded May 4, 1972 in Volume 2197, Page 259, Official Records of Santa Cruz County; thence North 80° 12' West 58.02 feet to the Northwestern boundary of said lands of Coates, as conveyed in the Deed from Arthur H. Timmons, et ux., to Joe L. Mello, et ux., recorded March 29, 1974 in Volume 2396, Page 565, Official Records of Santa Cruz County.

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CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA

701 OCEAN STREET, ROOM 310 SANTA CRUZ, CA 95060 (408) 426-7390 8-525-4863

PILED: 09/05/86 49TH DAY: 10/24/86 180TH DAY: 03/06/87 STAFF REPORT: 09/22/86 HEARING DATE: 10/07/86

STAFF: LS-(SC)/CM DOCUMENT NO.:

0469P

REGULAR CALENDAR AMENDMENT STAFF REPORT

PROJECT INFORMATION

APPLICANT: LEO AND PAT BAICHE, 1470 McBain, Campbell, CA 95008

APPLICATION NUMBER: 3-81-55-A

PROJECT LOCATION: 60 Geoffroy Drive, Live Oak Area (Blacks Point)

of Santa Cruz County

PROJECT DESCRIPTION: Foundation design modification to an approved coastal permit for the partial removal of an existing one-story single-family dwelling and construction of a second-story.

ASSESSOR'S PARCEL NUMBER(S): 028-143-34

LOT AREA: 9,600 sq. ft. ZONING: Residential

LCP JURISDICTION: Certified LCP of BUILDING COVERAGE: 1646 existing

Santa Cruz County; -- Original permit for reconstruction; 490

issued by Coastal Commission

PLAN DESIGNATION: PAVEMENT COVERAGE: 880 sq. ft.

PROJECT DENSITY: approx. 4 du/acre LANDSCAPE COVERAGE:

approx. 4,640 sq. ft.

HEIGHT ABV. FIN. GRADE: 24 ft. 6 in.

LOCAL APPROVALS RECEIVED: Santa Cruz County - zoning approval and variance for front yard setback; 8-13-81; exempt from C.E.Q.A. Variance extension 83-1288-DP; Santa Cruz County Building Permit Issued 1/8/85

SUBSTANTIVE FILE DOCUMENTS: Santa Cruz County Certified LCP; Rivoir 3-81-46 Al&2; Geoffrey 3-82-55; Lewis 3-84-307

PTT:

EXHIBIT

Plaintiffs RFJN - Exhibit A -000008

Exhibit 3

### STAFF RECOMMENDATION

The Staff recommends that the Commission adopt the following Resolution:

#### Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

#### RECOMMENDED CONDITIONS

#### Standard Conditions

See Exhibit A.

#### Special Conditions

- 1. FINAL PLANS
- A. PRIOR TO TRANSMITTAL OF THE PERMIT, the applicant shall submit for Executive Director review and approval, final plans as follows:
  - final site plan showing accurate location of all structures, limits of grading and vegetation alteration, landscaping, engineered drainage facilities, any other development, and sandy beach areas on a complete topographic base;
  - final building plans (beach view);
  - 3. final engineered foundation plans: and '
  - description of landscape, exterior building and surfacing materials.
- B. These plans shall incorporate measure which accomplish all of the following:
  - minimize site disturbance;
  - 2. reduce visible mass as seen from the beach;

Plaintiffs RFJN - Exhibit A -000009

Page 3

- implement geological engineering recommendations (except for a seawall);
- 4. erosion control (during construction and permanently);
- 5. use of native plant materials:
- minimize obstrusiveness through earth-tone colors, non-glare glass, shielded lighting, etc.; and
- 7 be consistent with all the following conditions.

#### 2. LATERAL ACCESS

PRIOR TO TRANSMITTAL OF THE PERMIT, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the mean high tide line to the toe of the bluff/or the toe of the existing seawall. The document shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and freee of any other encumbrances which may affect said interest. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

#### 3. PERMITTEES' ASSUMPTION OF RISK

PRIOR TO TRANSMITTAL OF THE PERMIT, the applicant shall submit to the Executive Director a deed restriction for recording free of prior liens except tax liens that binds the permittees and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide that (a) the permittees understand that the site is subject to extraordinary hazard from waves during storms and from erosion, and the permittees assume the liability from those hazards; (b) the permittees unconditionally waive any claim of liability on the part of the Commission or any other public agency for any damage from such hazards; and (c) the permittees understand construction in the face of these possible known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of storms.

LEO AND PAT RAICHE

Page 4

#### 4. DEED RESTRICTION

PRIOR TO TRANSMITTAL OF THE PERMIT, the applicant shall record a deed restriction in the form and content of which are to be approved in writing by the Executive Director of the Commission, stipulating that the landowner (deed holder) shall not construct any shoreline protective devices to protect the subject single family residence in the event that the structure, at some future point in time, is subject to damage from erosion or storm wave damage. In such an event, the landowner (deed holder) shall remove the structure from the parcel, reduce the size of the structure, or take some other such measure to protect the structure rather than the construction of a shoreline protection device. This document shall be recorded free of prior liens and encumbrances except for tax liens and shall run with the land, binding successors and assigns of th permittees or landowner.

#### 5. PRESCRIPTIVE RIGHTS

Nothing in this approval shall be construed to constitute a waiver of any sort or a determination of any issue of prescriptive rights which may exist on the parcel.

#### 6. FUTURE DEVELOPMENT

The approval of this permit in no way authorizes or condones any future development not shown on the final plans approved per Condition 1. Unless waived by the Executive Director, a separate Coastal Development Permit shall be required for any additions to the permitted development or any additional site disturbance, including placement of antennas or other minor structures above roof level of permitted structure, or elsewhere within view of Twin Lakes Beach.

#### RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

#### 1. Project History

The permittees are requesting an amendment to their Coastal Permit to modify the foundation design of an extensive remodel to an existing single family dwelling. The dwelling-remodel was originally approved as a partial removal of an existing 1,646 sq. ft. one-story single-family dwelling, with new construction of a second story and an increase of 490 sq. ft. of ground coverage. The Commission approved the project on the Administrative Calendar (3-81-55) in October of 1981 with no special conditions. In November 1984 Santa Cruz County approved a redesign of the

Exhibit 3 A-3-SCO-23-0003 Page 94 of 311

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foundation similar to one currently before the Commission, but the applicant failed to obtain Coastal Permit modifications. The Coastal Permit was extended twice once in October of 1983 and once in October of 1984.

In June of 1985 the permittee's contractor commenced the construction process. During various field inspections and contacts by the contractor with the Santa Cruz County building department staff, it was determined that the original structure was in very poor structural condition. (see Exhibit 1 & 2)

Specifically, as the building was being taken apart in early September of 1985, "it was observed that there was termite damage and dry rot in all wall areas and subfloor which originally had been intended to be utilized in the remodel project. It was further observed that the foundation had settled and was cracked in several places. It was further observed that existing portions of the foundation were inadequately reinforced and the anchor bolts were not sufficient. During the dismantling process, it was found that none of the elements of the structure which were originally intended to be utilized would meet the uniform building code requirements. To allow the building inspectors to confirm that the existing foundation could be utilized as anticipated, several sections of the old foundation were left at the proposed tie-in points. These remaining sections do not meet UBC requirements and would require removal and replacement. See letter from John Praser dated 11/5/85 and letter from John Kasunich dated 11/4/85 for further information."

With authorization from the Santa Cruz County building department to remove the "bulk" of the existing structure the contractor removed the entire existing residence. Since the project no longer constituted a "partial-removal and addition", Stop Work orders were issued by Santa Cruz County and the Commission staff (see Exhibits 3 & 4 for detailed chronology).

#### 2. Proposed Amendment

The current amendment involves a change in the foundation plans. The original house was located on a peninsula of land adjacent to the end of Geoffroy Drive. The project site is relatively level before dropping off abruptly at the top of approximately 28 MSL coastal cliffs. Monterey Bay is located to the south, a sandy beach (Twin Lakes - "Lincoln's" - State Beach) is at the base of the cliff to the west and a lagoon (Bonita Lagoon) is located to the north (see Exhibit 5).

The applicant's property is underlain by relatively loose sediments (terrace deposits) which are not well cemented and, therefore, have relatively low strength. These sediments are in turn underlain by a more resistant bedrock material known as the Purissima Formation (D. Leslie - Geologist; S.C.Co.).

Plaintiffs RFJN - Exhibit A -000012

Page 6

As proposed the new foundation system is "designed to withstand bluff erosion and slumping for the next 50 years, regardless of whether or not a coastal protection structure is implemented at the base of the bluff. The support system will consist of a pier and grade beam foundation. The piers will extend through the terrace deposit at the top of the bluff and into the underlying sandstone formation. The depth of the piers will be such that if erosion or slumping of the complete bluff should take place, the piers will be embedded deep enough to continue to support the structure" (J. Kasunich). Accordingly, the applicant submitted revised foundation plans to Santa Cruz County and the Commission's geologist for review. The revised plans have received local approval and technical review and approval from Commission staff (see Exhibits 6 5 7).

This amendment would not change the footprint of the dwelling as approved in the original permit. The architectural style is unchanged from the previous action. Santa Cruz County has reviewed the modification for structural changes and has approved the changes. Upon Coastal Commission approval the County will reinstate the original building permit and issue a new foundation permit. (see Exhibit 7). For the above reasons it was determined by the Executive Director that this modification to the foundation design was immaterial. Objections to the amendment were received from three residents (see Exhibit 8). A public hearing is required pursuant to Coastal Commission regulations.

#### 3. Public Access

Coastal Act public access policies require provisions for maximum access and recreational opportunities for all people consistent with public safety needs and protection of natural resource areas from overuse. Since the project site is now void of structures a public access analysis is required.

#### The Coastal Act states:

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

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

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3-81-55-A

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Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected ... (Section 30212)

Approximately 30% of the applicant's 9,600 sq. ft. parcel comprises beach and intertidal area adjacent to Twin Lakes State Beach. This beach is extremely popular and is one of the most heavily used beaches in Santa Cruz County. The beach, sand dune, and lagoon area which surrounds the applicant's peninsula home-site is continguous to and commonly considered to be part of the public state beach.

Beach access is available by several paths down the cliffs from 13th Avenue, 14th Avenue and at the end of Geoffroy Drive. Access used to be available across the applicant's parcel (although the steps in the bluff face have eroded and vegetation has overgrown the upper slope areas). For approximately twenty years this access path has primarily served the residence on the site. Since the time that construction stopped (Sept. 1985), a 6' wooden construction fence has blocked this access. Immediately adjacent to the project site (north-east), at the terminus of Geoffrey Drive, an approximately 5' chain link and barbed wire fence has been installed to preclude free beach access down the bluff at that location. However, a locked gate does provide an entrance to a defined trail apparently for neighborhood use only.

The locations of the paths to the state beach are well-known and well-used by both locals and visitors and provide adequate vertical access to the shore. The reconstruction of the applicant's residence does not appear to interfere with these existing beach access trails. The residence will be rebuilt on the same foundation footprint as originally approved in CDP-3-81-55.

As stated above, the sandy beach area of project parcel is heavily used by the public. Thus, it appears that the sandy beach portion of the applicant's parcel has been historically used by the public and therefore a strong case for prescriptive rights exist.

To meet the provisions of Section 30211 of the Coastal Act, development cannot interfere with the public right to use the sea where acquired through historical use or legislative authorization. Public prescriptive rights must, therefore, be protected wherever they exist. Where there is evidence of historic public use of the shoreline area, and where a proposed development could interfere with the asserted historic use, the Commission should protect the possible prescriptive rights. Such rights can be reserved through recordation of access agreements acknowledging the existence of public rights on the site or by siting and designing the proposed

LEO AND PAT RAICHE

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development in a manner which does not interfere with the public rights. The actions taken by the Commission should not diminish the potential prescriptive rights in any way. The Commission may, however, allow development to be sited in an area of historic public use where equivalent areas for public access are provided; such compromise dedication areas should provide for equivalent area and use of the accessways. As cited above, evidence of prescriptive use also indicates the need for dedication areas required under Section 30212 of the Coastal Act. Requiring dedications of historic use areas under 30212 would protect any public rights while avoiding public and private litigation costs over the issue of prescriptive rights in a quiet title action. Thus access conditions to protect existing public use have been included as a condition of this permit.

The language of Public Resources Code Section 30212 makes clear that the Legislature concurred with previous Commission's action and concluded that all new development resulting in any intensification of land use generates sufficient burdens on public access to require access conditions in conjunction with that development. The basis for the public access requirements of the Coastal Act can be readily discerned by analyzing the exceptions set forth in Section 30212(a) (1-3). In those exceptions, the Legislature has weighed the public policy issues involved, by defining situations where public access itself would be inappropriate, rather than focusing on the nature of the proposed development. For example, the exception for public safety and military security is a self-evident statement that access is not appropriate where personal harm to individual members of the public or the public as a whole, in the form of impaired military security, would result. Similarly, the exceptions indicate that public access requirements are not appropriate where access would adversely affect natural resources of a statewide interest (i.e., fragile coastal resources and agriculture). Each of these exceptions focuses, however, on the appropriateness of access itself, rather than on any burdens which might be generated by particular types of development. In other words, Section 30212 of the Coastal Act indicates that all new development generates access burdens and that the only situations where access is not required are where access itself would be inappropriate for public policy reasons.

The legislature has enacted criteria to be considered in establishing access requirements that relates to the "time, place and manner of public access..." (PRC 30214). These criteria provide the basis for determining the type and extent of access to be required under Section 30212. As in the case of the Section 30212(a) tests, the criteria set forth in Section 30214 focus on the appropriateness of access itself ("time, place and manner") and not on the particular impact of any proposed development. In every permit action, the Commission must therefore consider the criteria specified in Section 30214 and make findings where such criteria are applicable. These criteria focus on the physical aspects of the areas under consideration and on the type of access appropriate to

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the fragility of natural resources and the nature of development in the vicinity. The criteria also focus on the management aspects of providing public access. In this case where the area proposed by condition to be reserved for public use is adjacent to and indistinguishable from the Twin Lakes State Beach lands and will likely be managed by the State Parks in the future, use and management standards should conform with existing management policies of that agency for that area.

Thus based on the historical evidence that development along the California coast in many different ways in the precludes public use of the state-owned tidelands, based on the same conclusions by the Commission in adopting the Coastal Plan, and based upon the legislative expressions in both the 1972 and 1976 Coastal Acts, the Commission concludes that all new development projects between the first public roadway and the shoreline cause a sufficient burden on public access to warrant the imposition of access conditions as a condition to development, subject only to the exceptions specified by the Legislature.

As discussed above the shoreline area of the applicant's site has been historically used by the public, therefore, these rights must be protected. The Commission therefore finds that, with the addition of a condition requiring the dedication of the shoreline (sandy beach and tidal areas) of the subject site, this project can be found consistent with Coastal Act policies concerning public access.

#### 4. Scenic Resources

The proposed residential reconstruction and remodeling is located in the Live Oak area of Santa Cruz County betwen the first through public road and the sea. This area is an established residential community which is approximately 95% developed.

Section 30251 of the Coastal Act provides that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The project site overlooks Twin Lakes State Beach. The remodeled two-story structure as a blufftop house overlooking a publicly used beach will be visible from the beach. The proposed project is a two-story home. The majority of homes in the area are older one-story structures. However, in recent years many homes have been remodeled to include two-story elements. The proposed structure is not to be finished externally with stone and wood siding. The roof will be finished with shingles. The design and architectural style of the project, in staff's opinion, is far superior to the previous residence and many existing structures in the area. Additionally, the applicant proposes new landscaping for the site which should soften the stark nature of the blufftop site.

Therefore, as conditioned to require final review of exterior materials, landscaping plans, and restricting development to the proposed building envelope, the project is consistent with Section 30251 of the Coastal Act.

#### 5. Geologic Stability

Sections 30253(1) and (2) of the Coastal Act require that:

#### New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed amendment involves a change in the foundation design. Although no site specific geotechnical review has been conducted for the project site, detailed soil analysis and engineering has been incorporated into the proposed design. As stated previously this new design has been reviewed and approved by Santa Cruz County and the Commission's staff geologist. Bevertheless, some discussion is warranted relative to the stability of the existing building site.

Two separate geologic hazard assessments were conducted by Santa Cruz County staff in 1981 and 1984. (See Exhibit \_\_). These assessments as well as analysis by the applicant's engineers original assumed, that at sometime in the future, addition to the minimal shoreline structure(s) (rip-rap installed by previous owners.

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under emergency conditions) would be required. In order to reinstate the County's building permit(s), amend the original coastal development permit, and not be subject to a new permit process and geologic setback criteria under Santa Cruz County's certified Local Coastal Program the applicant chose to modify the foundation plans to eliminate the need for any shoreline structure. In fact, the applicants in relying on the engineer's design analysis have indicated that they would accept a restriction preventing future shoreline protection on their property.

The project site is underlain by relatively loose sediments (terrace deposits) which are not well comented and, therefore, have relatively low strength. These sediments are in turn underlain by a more resistant bedrock material known as the Purissima Formation (D. Leslie - Geologist; S.C.Co.).

As proposed the new foundation system is "designed to withstand bluff erosion and slumping for the next 50 years, regardless of whether or not a coastal protection structure is implemented at the base of the bluff. The support system will consist of a pier and grade beam foundation. The piers will extend through the terrace deposit at the top of the bluff and into the underlying sandstone formation. The depth of the piers will be such that if erosion or slumping of the complete bluff should take place, the piers will be embedded deep enough to continue to support the structure" (J. Kasunich).

Mr. Kasunich has noted that, "The cliff erosion rate at the subject property has been averaging about 6 inches per year for the period of 1960 to 1970. Recent strong ocean storms may have accelerated this rate. A coastal protection structure at the base of the cliff would retard the [landform] erosion rate, protecting the yard area about the proposed residence, even though the house will be designed to stand free on its pier foundation." To assure that the engineer's design criteria are carried out in the field the applicant has agreed to retain Mr. Kasunich's firm "... to observe the excavation and installation of the foundation system for the proposed residence." This procedure, in lieu of a detailed predesign geotechnical investigation has been approved by the Santa Cruz Building Department and the Commission's staff geologist.

In order to be consistent with the Coastal Act, the proposed project and amendment must follow the above recommendations, as conditioned. Final engineered foundation and surface drainage plans will be necessary. Given the proximity of the project to the bluff, the applicant will have to record a waiver of liability, or show evidence of similar waiver, as conditioned, for conformity with Section 30253.

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# 6. LCP/CEOA

The certified Santa Cruz County LCP designates this site as medium residential. The Hazards Component, Beach Brosion, 3.3.7 states:

Allow new development in areas subject to storm wave inundation and beach erosion on existing lots of record within existing developed neighborhoods under the following circumstances:

- a. Technical report (either a geologic hazards assessment or a full geologic report) demonstrating that the potential hazard can be mitigated). Mitigations can include, but are not limited to, building setbacks, elevation of the proposed structure and friction pier or deep caisson foundation.
- b. Mitigation of the potential hazard is not dependent on shoreline protection structures except on lots where both adjacent parcels are already similarly protected.
- c. A deed restriction indicating the potential hazards on the site and the level of prior investigation conducted is recorded on the deed with the County Recorder.

Under Flood, Tsunami, Hazard, the following policy applies:

3.4.3 Allow new development in areas immediately adjacent to coastal beaches only if a geologist determines that wave action, storm swell and tsunami inundation are not a hazard to the proposed development. Such determination shall be made by the staff geologist or a registered geologist may conduct this review at applicant's choice and expense.

Under Slope Stability and Erosion, the following policy applies: .

# 3.2.1 GP

Require a geologic hazards assessment of all discretionary permits, including grading permits within areas of known slope instability, in all cases where development is planned on slopes greater than 30% and for all projects including permits for single-family dwellings on existing parcels of record in the designated landslide review area. Such assessment shall be prepared by County staff or a registered geologist may conduct this review at applicant's choice and expense.

The Visual Resources Component contains the following policy under New Development:

- 6.2.4 Maintain the scenic integrity of open beaches.
- a. Except where permitted by LCP Policies, prohibit the placement of new permanent structures on beaches. (See Hazards policies 3.3.3, 3.3.8)

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The Access Component designates Twin Lakes State Beach/Lincoln Beach as a Primary Access Point 4.1.2 pg. 71. The following policies apply:

#### PROGRAM

- 4.1.5 Develop a program to inform the public of primary public access to the shoreline phased with the provision of basic improvements, maintenance, recycling, garbage collection, and law enforcement. Establish priorities for provision of improvements at primary accesses, giving highest priority to the provision of basic improvements.
- 4.3.1 Protect access to all beaches where a high or medicum likelihood of prescriptive rights has been identified through permit conditions such as easement dedication or continued maintenance as an accessway by a private group.
- 4.3.2 Vertical Access: As a condition of new development approval, require dedication of vertical access easements adequate to accommodate the intended use if adverse environmental impacts and use conflicts can be mitigated, under the following conditions:
- 4. ...
- b. Within the Urban Services Line:
  - o from the first public roadway to the shoreline if there is not dedicated access within 650 feet;
  - o through properties inland of the first public roadway if there is evidence that residents have been using the property to gain access to the shoreline, and if closure of the pathway would require residents to detour more than one-eighth mile.
- c. All dedications required shall be consistent with policies 4.5.1 and 4.5.6.
- 4.3.3.a. No development shall be approved which would interfere with public lateral access along beaches in Live Oak and from New Brighton Beach to the Pajaro River. Where appropriate require 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 also see Policy 3.3.3.

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LEO AND PAT RAICHE

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Based upon the current local building permits the proposed amendment request appears consistent with the certified LCP.

The proposed amendment is categorically exempt and will not have any adverse impacts on the environment within the meaning of the California Environmental Quality Act.

The Santa Cruz County Local Coastal Program (LCP) has been certified by the Commission and the County has been issuing coastal permits since March 1983. This application is an amendment to a coastal permit granted by the Coastal Commission. In this case the project is being considered under construction and therefore the Commission retains permit authority.

As conditioned, the proposed amendment is consistent with the policies contained in Chapter 3 of the Coastal Act.

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or remove to .	Intake	ID:			
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# SANTA CRUZ COUNTY PLANNING DEPARTMENT Code Enforcement Complaint Record

**Complaint Information Cross Street:** Complaint Description: Complaint Code: Additional Information: **Complaint Assignment** Priority: Date Assigned:

Plaintiffs RFJN - Exhibit B -000001

Assigned to:

CC TY OF SANTA CRUZ - ALUS 3(" 05/21/97 IU U-ALPCC110 15:46:17 ALLEGED VIOLATION/INVESTIGATIONS ALSCC110E APN : 028 143 35 STAFF NAME: LOCATELLI PERMIT NO.: OWNER: LEWIS RICHARD ALAN & WENDY ANN : PLAN EQ ID: SITUS: 70 GEOFFROY DR UPDATED : 970520 DFL C : DATE: 970430 INVESTIGATION CODE: E50 BIOTIC RESOURCE VIOLATION ON DATE: STATUS : 16 Sent Letter CONTACT RESOLUTION DATE: FOLLOW-UP DATE: 970701 POLLOW-UP: F6 Will Check Compliance 2 DATE: PRIORITY : B ARCHIVE ALLEGED VIOLATION/INVESTIGATION: : BEACH ACCESS GATE FOR 20 YRS, HAS, BEEN LOCKED & ; : TOTAL OF HOURS: : BARBED WIRE PUT IN PLACE, COASTAL ACCESS GONE. : SUPERVISORY DIST.: SU : : REFER TO ASSESSOR: • - PRESS 'PF16' HISTORY AVAILABLE - PRESS 'PF15' TO SEE STATUS CODES - PRESS 'PF13' - PRESS 'PF14' TO ADD COMMENTS TO ADD BILLABLE HOURS CHANGE ALL NECESSARY INFORMATION, PRESS 'ENTER' WHEN COMPLETED

PRESS 'PF5'

TO DELETE

Plaintiffs RFJN - Exhibit B -000002

# PLANNING DEPARTMENT



COUNTY OF SANTA CRUZ

GOVERNMENTAL CENTER

701 OCEAN STREET ROOM 400 SANTA CRUZ, CALIFORNIA 95060 (408) 454-2580 FAX (408) 454-2131 TDD (408) 454-2123

May 20, 1997

Richard Alan & Wendy Ann Lewis 70 Geoffroy Drive . Santa Cruz, Ca. 95062

SUBJECT: ASSESSORS' PARCEL NO.: 028-143-35

ADDRESS: 70 GEOFFROY DRIVE, SANTA CRUZ, CA.

Dear Mr. & Mrs. Lewis:

In Santa Cruz County, building, land use, and environmental ordinances have been adopted to uphold public health and safety codes, preserve the quality of life, maintain the beauty of the land, protect lakes, streams and wild life. To support the ordinances, Santa Cruz County citizens often request code compliance staff to investigate alleged violations.

Recently a report has been received in this office alleging that the following violations of the county ordinances exist on your property:

 Beach access gate for 20 years has been locked and barbed wire put in place, coastal access gone.

To determine if the report is valid, I will inspect your property. If a planning violation exists, a notice of violation will be issued. Once a Notice of Violation is posted, the owner is responsible to pay all Code Compliance staff costs incurred, so it would be to your best interest to contact the Code Compliance Officer to start the process to rectify violation(s). The county will allow thirty days to apply for the required permits or to resolve the code violation(s). If the violation(s) are resolved within thirty days, you could avoid costly penalties.

Please be aware that the Board of Supervisor's have adopted additional ordinances which increase the penalties for failure to rectify building and/or zoning violations.

If you would like to discuss how to resolve a code violation or to schedule the appointment to a mutually convenient date and time, please contact me at 454-3197.

Sincerely.

OCHA TACATELLI DEBRA LOCATELLI

Code Compliance Investigator

lewis/018 DL/

Plaintiffs RFJN - Exhibit B -000003

COUNTY OF SANTA CRUZ

Date: 03/25/10

Time: 08:25:57 

APN: 028-143-35 Contact Date: 04/30/97

Code: E50

05/20/97 The Status Code was Sent Letter. FOLLOW-UP CODE CHANGED. THE OLD CODE WAS (). FOLLOW-UP DATE CHANGED. THE OLD DAT E WAS ( ). STATUS CODE CHANGED, THE OLD CODE WAS (Complaint Received).

05/21/97 The Status Code was Sent Letter. Added by EMW Alleged violations letter mailed to Richard & Wendy Lewis 5/21/97 (emw)

06/13/97 BILLING HOURS .5 FOR Complaint Investigation. Added by DFL Discretionary permit 95-0198 - Coastal Zone permit findings states "public access exists to the beach to the Nest of the project site. No public access exists along or through this parcel. No utility easments exist across the lot.

06/16/97 BILLING HOURS .5 FOR On-Site Inspection. Added by CAM Site inspection conducted w/Mr and Mrs Lewis present. It is clear access to beach has not been in use for several years due to the growth of brush present. It is also clear that no safe access to the beach exists at this point and if one were to be developed in the future it would require a substantial stairway. Review of 1994 General Plan and Local Coastal Plan does state Geoffrey Drive is a desired coastal access point. However, a review of discretionary permit 95-0198 which was approved for this parcel disclosed the access point is not on this parcel but is along the western boundary. If this was ever a coastal access in the past and the complainant wants to pursue access rights as a prescriptive easement, it will need to be done as a private civil matter. Site inspection was conducted on 6/13/97. CAM

06/16/97 The Status Code was Resolved. Added by CAM
FOLLOW-UP DATE CHANGED, THE OLD DATE WAS (970701). RESOLUTION DATE
CHANGED, THE OLD DATE WAS (). STATUS CODE CHANGED, THE OLD CODE WAS (Sent Letter).

COUNTY OF SANTA CRUZ
Orcement Investigation Comments
Contact Date: 11/26/97

Date: 03/25/10
Time: 08:25:57
Code: B75 Code inforcement Investigation Commences
Contact Date: 11/26/97

APN: 028-143-35

03/05/98 The Status Code was Resolved.
RESOLUTION DATE CHANGED, THE OLD DATE WAS ( ). STATUS CODE CHANGED, THE OLD CODE WAS (Owner Notified of Void Pe).

03/05/98 BILLING HOURS 1 FOR Conference with Parties. Added by DFL According to Building Inspection Screen, building permit 109720 has been finaled. Voided permits are finaled, case resolved.

CODE COMPLIANCE PARCEL PG' ARCH REPORT

APN: 028-143-35

Run Date: 03/25/10 Run Time: 08.25.59

ASSESSOR INFORMATION for APN 028-143-35

A=Active Parcel Status:

Parcel Notebook?: YES

Situs Address: GEOFFROY DR SANTA CRUZ

Assessee Name: CAUMELS MARK & SUZANNE J TRUSTEES
Mailing Street: P 0 BOX 3705
City/State/Zip: MERCED CA 9

CA 95344

PARCEL ETALS

Name CAUWELS MARK & SUZANNE J TRUSTEES

ALUS INVESTIGATION INFORMATION

04/30/97 Contact Date:

Redtag?: NO

Redtag?: NO

Redtag?: NO

Permit No.:

Permit No.:

Investigation Code: E50 BIOTIC RESOURCE VIOLATION

Status: Resolved

Last Action: C7 Resolved

Follow-Up Code: F6 Will Check Compliance

Follow-Up Date:

Resolved Date: 06/13/97

Archived Date:

Priority: B BEACH ACCESS GATE FOR 20 YRS HAS BEEN LOCKED & BARBED WIRE PUT IN PLACE, COASTAL ACCESS GONE. Alleged Violation:

History Available?:

Contact Date: 11/26/97

Investigation Code: B75 PERMIT VOID

Status: Resolved

Last Action: Resolved Will Check Compliance

Follow-Up Code: Follow-Up Date:

Resolved Date: 03/05/98

Archived Date: Priority: Alleged Violation: PERMIT 109720 VOIDED - FAILURE TO OBTAIN INSPEC-

TION DURING SPECIAL CONDITION 3 MONTH EXTENSION.

YES History Available?:

10/12/09 Contact Date:

Investigation Code: B90 OTHER CODE INVESTIGATION

**Resolved** Status:

C4 Complaint Not Valid Last Action:

Follow-Up Code: Follow-Up Date:

Resolved Date:

10/13/09

Permit No.:

Archived Date: Priority. Alleged Violation:

REMODEL INSIDE AND OUT. SIDING AND ROOF HAVE BEEN REMOVED. RESOLVED ACTIVE ISSUED BP NO. 152433.

SEE HANSEN SR NO. 3445

History Available?: NO

Plaintiffs RFJN - Exhibit B -000006

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CODE COMPLIANCE PARCEL PFF 'NRCH REPORT APN: 028-143-35

Run Date: 03/25/10 Run Time: 08.25.59 Redtag?: NO

Contact Date: 12/16/09
Investigation Code: Z10 ZONING VIOLATION
Status: Resolved
Last Action: C4 Complaint Not Valid

Follow-Up Code: Follow-Up Date:

Resolved Date: 01/08/10

Permit No.:

Alleged Violation: BEACH ACCESS CUTOFF. EXISTING GATE HAS BEEN LOCKED AND BARB WIRE PUT IN PLACE TO CUT OFF ACCESS SEE HANSEN.

VFS

VFS

VFS

History Available?: YES

Contact Date: 03/25/10
Investigation Code: B90 OTHER CODE INVESTIGATION
Status: Active Redtag?: NO

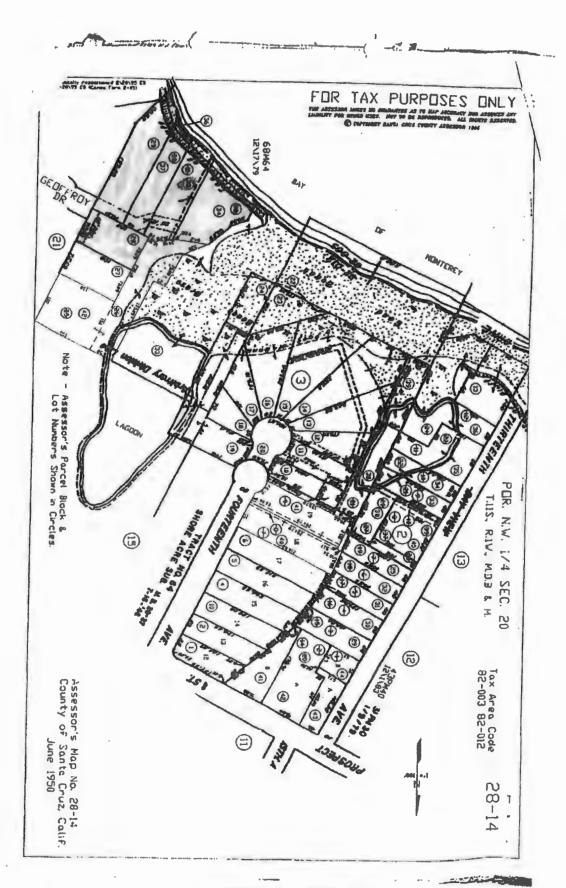
Last Action: C1 Complaint Received
Follow-Up Code: F1 Will Conduct Site Inspection
Follow-Up Date: 03/29/10
Resolved Date:
Archived Date: Permit No.: CONSTRUCTING A STAIRMAY ON THE COASTAL BLUFF DOWN TO THE BEACH WITHOUT APPROVALS OR PERMITS.

Alleged Violation:

SEE HANSEN

History Available?: NO

1 ETALS 5 INVESTIGATIONS



Plaintiffs RFJN - Exhibit B -000008

**ELECTRONICALLY FILED** Superior Court of California County of Santa Cruz 3/24/2020 11:51 AM IRA JAMES HARRIS, SB #99760 Alex/Calvo, Clerk LAW OFFICES OF IRA JAMES HARRIS By: Sandra Gondalez, Deputy 2 One Camino Sobrante, Suite 208 P.O. Box 1478 3 Orinda, CA 94563 Telephone: (925) 258-5100 Facsimile: (925) 281-4977 5 Attorney for Plaintiffs 6 7 SUPERIOR COURT OF CALIFORNIA 8 **COUNTY OF SANTA CRUZ** 9 10 FOWLER PACKING COMPANY, a California Corporation, WILLIAM P. AND LINDA L. SULLIVAN, TRUSTEES OF THE SULLIVAN 11 No.: 19CV00673 DECLARATION OF DAWNA SUTTON IN SUPPORT OF PLAINTIFFS' 12 FAMILY REVOCABLE LIVING TRUST DATED MAY 2, 1996; MARK A. AND SUZANNE J. CAUWELS, TRUSTEES OF THE MARK AND SUZANNE CAUWELS FAMILY TRUST INITIALLY CREATED ON JULY 30, 1992; 13 APPLICATION FOR A DEFAULT JUDGMENT AGAINST THE MEMBERS OF THE PUBLIC ON THE FIRST AND SECOND CAUSES OF ACTION FOR 15 NORMAN L. CHAPMAN AND CAROL S. **QUIET TITLE** CHAPMAN, TRUSTEES OF THE 2000 NORMAN L. CHAPMAN & CAROL S. CHAPMAN REVOCABLE TRUST UNDER 16 Date: Time: INSTRUMENT DATED JUNE 6, 2000; DAWNA Dept.: 17 SUTTON, TRUSTEE OF THE SUTTON FAMILY Judge: REVOCABLE TRUST DATED OCTOBER 6. Trial Date: None 18 1997 19 February 27, 2019 Complaint Filed: 20 Plaintiffs, 21 VS. COUNTY OF SANTA CRUZ, a Public Entity; CALIFORNIA COASTAL COMMISSION, a 22 Public Agency; ALL PERSONS UNKNOWN
CLAIMING ANY LEGAL OR EQUITABLE
RIGHT, TITLE, ESTATE, LIEN OR INTEREST
IN THE PROPERTY DESCRIBED IN THE 23 24 COMPLAINT ADVERSE TO PLAINTIFFS 25 TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO: and DOES 1 to 100, inclusive, 26 Defendants. 27 28

Exhibit 3 A-3-SCO-23-0003 Page 113 of 311

DECLARATION OF DAWNA SUTTON 190 PLAINTIFFS' APPLICATION FOR DEFAULT JUDGMENT

# I, DAWNA SUTTON., hereby declare:

- 1. I am an individual over the age of eighteen, a resident of the County of Santa Cruz and State of California. I am the Trustee of the Sutton Family Revocable Trust dated October 6, 1997 a Plaintiff in this action. The following is true of my own personal knowledge and I can and will competently so testify to any and all facts set forth below.
- 2. The Trust owns the property located at 90 Geoffroy Drive, Santa Cruz, California otherwise known as APN 028-143-29. Attached as Exhibit A hereto is a true and correct copy of a preliminary title report from Chicago Title regarding the matters recorded and/or known to encumber my property.
- 3. We purchased 90 Geoffroy Drive, Santa Cruz, California on or about 1950. At that time an old dilapidated earthen stairway extended down the steep slope from 70 Geoffroy Drive to Mr. Robert Rittenhouse's parcel at APN 028-143-26. In 1964, or possibly even earlier, a six foot high, chain link, barbed wire fence with a chained and locked gate was installed at the top of the eastern bluff off 70 Geoffroy Drive barring access to the earthen stairway.
- 4. My daughter, who is now 64 years old, regularly used the gated stairway down 70 Geoffroy Drive, with permission of the owners, until she was ten (10) years of age. At that time, as a result of trespassers attempting to use the gate with her and/or other neighbors (who had permission) or trespassers squeezing through the gap caused by the chain, the owners of 70 Geoffroy Drive locked it permanently and let the bluff return to its natural condition. The slope soon became overgrown with vegetation and the path/stairway (as well as the fence and gate) essentially disappeared underneath the native plants.
- 5. At that time we began using the gate and stairs through and across 63 Geoffroy to the beach, with the owner's permission. We did so to discourage trespassers, as the old stairway off the private drive from 70 Geoffroy was more visible, and as a result had periodically attracted members of the public, who would walk down our private driveway, then squeeze through the chained gate to access the stairway to the beach (thereby trespassing across all of our properties).

DECLARATION OF DAWNA SUTTON ISO PLAINTIFFS' APPLICATION FOR DEFAULT JUDGMENT

- 6. The owners of 70 Geoffroy Drive, which included Richard and Wendy Lewis and later Eugene and Daymel Shklar, did not use the gated stairway and instead accessed the beach through the rear yard of 63 Geoffroy as we had for years. I am informed and believe that both the Lewises and Sklars installed and maintained no-trespassing signs and regularly took action to block or confront trespassers and to have any vehicles which parked on our private driveway towed away.
- 7. Each of the homeowners who comprise Geoffroy Homeowners Association (60, 63, 70, 80 and 90 Geoffroy Drive) have taken action to prevent trespassers from parking on our private driveway or coming down the driveway to view or attempt to access Twin Lakes State Beach. These efforts were very successful as the trespass activities (with the exception of vehicles which continued to park on our private drive blocking access and a trespassing vandal who broke into and burned 60 Geoffroy to the ground on January 12, 2013) came to a complete halt in 2001, if not earlier.
- 8. I have regularly paid taxes on my property inclusive of the Easement that extends through my lot as a private driveway for the four other properties that lie along the private driveway.
- 9. The private easement and/or right of way (hereinafter as "the EASEMENT") that benefits each of the five properties is legally described as being Twenty Five (25) feet in width, measured at right angles, twelve and one-half (12.5) Feet on each side of the following described centerline:

Beginning at the 3/8 inch iron pipe on the western boundary of the map entitled "Tract Number 57, Santa Maria Cliffs," being a part of Section 20, Township 11 South, Range 2 West, Mount Diablo Meridian, Santa Cruz County, California," filed for record in the office of the County Recorder of Santa Cruz County on March 11, 1947 in Map Book 28 at Page 48, Santa Cruz County Records, from which the most northern corner of Lot 22 as shown on said Map bears South 25° 10' West 12.50 Feet distant;

Thence from said Point of Beginning North 64° 50' West 98.18 Feet;

Thence South 81° 52' West 25 Feet to a Point on the Southeastern Boundary of the land conveyed by Joe L. Mello et.ux. to Vincent J. Coates et.ux. recorded May 4, 1972 in Volume 2197 Page 259, official records of Santa Cruz County;

Thence North 80° 12' West 58.02 Feet to the Northwester Boundary of said land of Coates.

- 10. I, along with the four other property owners along this private driveway, have regularly excluded any and all persons (other than those arriving with permission or by invitation or whom are otherwise seeking to pick up or deliver mail, parcels etc.) from parking on our private driveway as well as from traversing down our private driveway to view or attempt to travel to or from Twin Lakes State Beach. While we experienced a few trespassers back in the 1970's and 1980's, they were promptly confronted, told that they were trespassing and escorted off the property. Private Property and No Trespassing signs were posted and have remained in place.
- 11. As a result of the health and safety issues associated with unknown and/or abandoned vehicles extending into our narrow private driveway (as any vehicle parked on the 15 feet wide segment of pavement so as to provide room for the passenger to exit the vehicle can seriously interfere with those seeking to enter or exit their properties in an emergency) as well as the vandals that seek to take advantage of the non-resident owners (as was the case with 60 Geoffroy in 2013), we formed the Geoffroy Homeowners' Association to maintain the gated improvements that the County of Santa Cruz allowed us to install in early 2016. I understand that the health and safety concerns addressed by that permitted improvement is now being called into question by the California Coastal Commission purportedly based on the non-existent claim of "historic public access" through some unknown portion of the end of Geoffroy. As reflected in the above, no prescriptive rights were allowed to ripen and I cannot identify a single person whom was regularly encountered parking on or attempting to access Twin Lakes State Beach from our private driveway.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 2020 at Santa Cruz, California.

Dawna Sutton

declaration of Dawna sutton iso plaintiffs' application for default judgment



# **PRELIMINARY REPORT**

In response to the application for a policy of title Insurance referenced herein, Chicago Title Insurance Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(ies) of title insurance to be issued hereunder will be policy(ies) of Chlcago Title Insurance Company, a Florida corporation.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.

**Chicago Title Insurance Company** 

By:

**President** 

Countersigned By:

**Authorized Officer or Agent** 

Attest:

Secretary

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Visit Us on our Website: www.ctic.com



ISSUING OFFICE: 50 Winham Street, Salinas, CA 93901

# Another Prompt Delivery From Chicago Title Insurance Company Title Department Where Local Experience And Expertise Make A Difference

### PRELIMINARY REPORT

Title Officer: Rebecca Smith Email: Smithreb@ctt.com

Title No.: ·FWMN-TO18001562-RS

TO: Law Office of Ira James Harris

One Camino Sobrante, Suite 208, P.O. Box 1478

Orinda, CA 94563 Attn: Ira James Harris

PROPERTY ADDRESS(ES): 90 Geoffroy Drive, Santa Cruz, CA

EFFECTIVE DATE: November 30, 2018 at 07:30 AM

The form of policy or policies of title insurance contemplated by this report is:

CLTA Standard Coverage Policy 1990 (04-08-14)

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A Fee

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

Dawna F. Sutton, Successor Trustee of The Sutton Family Revocable Trust dated October 6, 1997

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

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# **EXHIBIT "A"**Legal Description

For APN/Parcel ID(s): 028-143-29

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA IN COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Being a part of the land conveyed to Paul Prom, et ux, by Deed recorded August 18, 1949 in Book 733, at Page 621, Official Records of Santa Cruz County, and described as follows:

Beginning at an iron pipe on the Southeasterly line of said land of Prom, from which the most Northern comer of Lot 22, as shown on that certain map entitled "Tract No. 57, Santa Maria Cliffs, etc." filed March 11, 1947 in Book 28 of Maps, at Page 48, Records of Santa Cruz County, bears N. 25°10' E. 174.82 feet distant; thence, from said point of beginning, along the Northwesterly line of said subdivision and the Southeasterly line of land of said Prom, N. 25°10' E. 199.82 feet to the Eastern corner of said land of Prom; thence along the Northwesterly line of lands of Prom, N. 64°50' W. 70.51 feet to a point; thence, on a line parallel with the Northwesterly line of said Tract No. 57, S. 25°10' West to the Bay of Monterey; thence Southeasterly, along the Bay of Monterey, to a point from which the point of beginning bears N. 45° East; thence N. 45°E. 65.62 feet to the point of beginning.

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# AT THE DATE HEREOF, EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:

 Property taxes, including any personal property taxes and any assessments collected with taxes are as follows:

 Code Area:
 82-040

 Tax Identification No.:
 028-143-29

 Fiscal Year:
 2018-2019

 1st Installment:
 \$1,553.50 Paid

 2nd Installment:
 \$1,553.50 Open

Exemption: \$0.00
Land: \$98,982.00
Improvements: \$76,560.00
Personal Property: \$0.00

- 2. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring prior to Date of Policy.
- Any adverse claim based upon the assertion that some portion of said Land is tide or submerged lands, or has been created by artificial means or has accreted to such portion so created.
- Rights and easements for navigation and fishery which may exist over that portion of said Land lying beneath the waters of Bay of Monterey.
- Any rights in favor of the public which may exist on said Land if said Land or portions thereof are or were at any time used by the public.
- 6. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Coast Counties Gas and Electric Company
Purpose: public utilities with right of ingress and egress

Recording Date: January 20, 1948

Recording No.: Book 614, Page 64, Official Records

Affects: as set forth therein

7. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document;

Reserved by: R.O. Lincoln, et ux right of way Recording Date: August 18, 1949

Recording Date: August 18, 1949
Recording No.: Book 733, Page 621, Official Records

Affects: as set forth therein

# **EXCEPTIONS** (continued)

8. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to:

Coast Counties Gas and Electric Company

Purpose:

pipeline and appurtenances thereto

Recording Date:

April 21, 1950

Recording No.:

Book 769, Page 200, Official Records

The exact location and extent of said easement is not disclosed of record.

9. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to:

East Cliff Sanitation District

Purpose:

sanitary sewer and appurtenances thereto,

with the right of ingress and egress

Recording Date:

July 2, 1959

Recording No.:

Book 1256, Page 109, Official Records

Affects:

as set forth therein

10. A deed of trust to secure an indebtedness in the amount shown below,

Amount:

\$648,000.00

Dated:

August 26, 2004

Trustor/Grantor

Dawna F. Sutton, a married woman CTC Foredosure Services Corp.

Trustee: Beneficiary:

Mortgage Electronic Registration Systems, Inc. ("MERS") as Nominee for

America's Wholesale Lender

Recording Date:

August 31, 2004

Recording No.:

2004-0063413 of Official Records

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: 11.

Granted to:

Robert P. Dilworth, Trustee

Purpose:

ingress and egress December 7, 2007

Recording Date: Recording No.:

2007-0061687 of Official Records

Affects:

as set forth therein

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# **EXCEPTIONS**

(continued)

12. The herein described property lies within the boundaries of a Mello-Roos Community Facilities District (CFD) as follows:

CFD No.:

Santa Cruz Libraries Facilities Financing Authority CFD No. 2016-1

For:

Library Facilities

Disclosed by:

Notice of Special Tax Lien

Recording Date:

August 18, 2016

Recording No.:

2016-0030577 of Official Records

This property, along with all other parcels in the CFD, is liable for an annual special tax. This special tax is included with and payable with the general property taxes.

The tax may not be prepaid.

Reference is hereby made to said document for full particulars.

13. Matters contained in that certain document

Entitled:

Declaration of Covenants, Conditions and Restrictions and

Road and Security Gate Maintenance Agreement

Recording Date:

October 11, 2016

Recording No.:

2016-0039232 of Official Records

Reference is hereby made to said document for full particulars.

Among other things, said document provides for assessments due The Geoffroy Homeowners Association.

14. The Company will require either (a) a complete copy of the trust agreement and any amendments thereto certified by the trustee(s) to be a true and complete copy with respect to the hereinafter named trust, or (b) a Certification, pursuant to California Probate Code Section 18100.5, executed by all of the current trustee(s) of the hereinafter named trust, a form of which is attached.

Name of Trust:

The Sutton Family Revocable Trust

15. The Santa Cruz County Recorder does not allow white out or correction tape on any documents. Should there be corrections to be made, please contact your Title Officer for assistance.

**END OF EXCEPTIONS** 

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#### NOTES

- Note 1. Please consult with your Title Officer for E-Recording fees.
- Note: The policy of title insurance will include an arbitration provision. The Company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.
- Note: None of the items shown in this report will cause the Company to decline to attach CLTA Endorsement Form 100 to an Extended Coverage Loan Policy, when issued.
- Note: The Company is not aware of any matters which would cause it to decline to attach CLTA Endorsement Form 116 indicating that there is located on said land a Single Family Residence, known as 90 Geoffroy Drive, Santa Cruz, CA, to an Extended Coverage Loan Policy.
- Note: There are NO conveyances affecting said Land recorded within 24 months of the date of this report.
- Note 6. Notice: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.
- Note 7. Your application for title insurance was placed by reference to only a street address or tax identification number. Based on our records, we believe that the legal description in this report covers the parcel(s) of Land that you requested. If the legal description is incorrect, the seller/borrower must notify the Company and/or the settlement company in order to prevent errors and to be certain that the correct parcel(s) of Land will appear on any documents to be recorded in connection with this transaction and on the policy of title insurance.
- Note: If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Sald statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.
- Note 9. Note: Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirement cannot be met, please call the Company at the number provided in this report.

# **END OF NOTES**

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# **WIRE FRAUD ALERT**

This Notice is not intended to provide legal or professional advice. If you have any questions, please consult with a lawyer.

All parties to a real estate transaction are targets for wire fraud and many have lost hundreds of thousands of dollars because they simply relied on the wire instructions received via email, without further verification. If funds are to be wired in conjunction with this real estate transaction, we strongly recommend verbal verification of wire instructions through a known, trusted phone number prior to sending funds.

In addition, the following non-exclusive self-protection strategies are recommended to minimize exposure to possible wire fraud.

- NEVER RELY on emails purporting to change wire instructions. Parties to a transaction rarely change wire instructions in the course of a transaction.
- ALWAYS VERIFY wire instructions, specifically the ABA routing number and account number, by calling the party who sent the instructions to you. DO NOT use the phone number provided in the email containing the instructions, use phone numbers you have called before or can otherwise verify. Obtain the number of relevant parties to the transaction as soon as an escrow account is opened. DO NOT send an email to verify as the email address may be incorrect or the email may be intercepted by the fraudster.
- USE COMPLEX EMAIL PASSWORDS that employ a combination of mixed case, numbers, and symbols.
   Make your passwords greater than eight (8) characters. Also, change your password often and do NOT reuse the same password for other online accounts.
- USE MULTI-FACTOR AUTHENTICATION for email accounts. Your email provider or IT staff may have specific instructions on how to implement this feature.

For more information on wire-fraud scams or to report an incident, please refer to the following links:

Federal Bureau of Investigation: http://www.fbi.gov Internet Crime Complain Center: http://www.ic3.gov

Wire Fraud Alert Original Effective Date: 5/11/2017 Current Version Date: 5/11/2017

FWMN-TO18001562 - WIRE0016 (DSI Rev. 12/07/17)

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# FIDELITY NATIONAL FINANCIAL PRIVACY NOTICE Revised May 1, 2018

Fidelity National Financial, Inc. and its majority-owned subsidiary companies (collectively, "FNF", "our," or "we") respect and are committed to protecting your privacy. This Privacy Notice explains how we collect, use, and protect personal information, when and to whom we disclose such information, and the choices you have about the use and disclosure of that information.

### Types of Information Collected

We may collect two types of information from you: Personal Information and Browsing Information.

Personal Information. FNF may collect the following categories of Personal Information:

- · contact information (e.g., name, address, phone number, email address);
- · demographic information (e.g., date of birth, gender, marital status);
- · identity information (e.g. Social Security Number, driver's license, passport, or other government ID number);
- · financial account information (e.g. loan or bank account Information); and
- other personal information necessary to provide products or services to you.

<u>Browsing Information</u>. FNF may automatically collect the following types of Browsing Information when you access an FNF website, online service, or application (each an "FNF Website") from your Internet browser, computer, and/or mobile device:

- Internet Protocol (IP) address and operating system;
- · browser version, language, and type;
- · domain name system requests; and
- browsing history on the FNF Website, such as date and time of your visit to the FNF Website and visits to the pages within the FNF Website.

# How Personal Information is Collected

We may collect Personal Information about you from:

- · information we receive from you on applications or other forms;
- · information about your transactions with FNF, our affiliates, or others; and
- information we receive from consumer reporting agencies and/or governmental entities, either directly from these entities or through others.

# How Browsing Information is Collected

If you visit or use an FNF Website, Browsing Information may be collected during your visit. Like most websites, our servers automatically log each visitor to the FNF Website and may collect the Browsing Information described above. We use Browsing Information for system administration, troubleshooting, fraud investigation, and to improve our websites. Browsing Information generally does not reveal anything personal about you, though if you have created a user account for an FNF Website and are logged into that account, the FNF Website may be able to link certain browsing activity to your user account.

#### Other Online Specifics

<u>Cookies</u>. When you visit an FNF Website, a "cookie" may be sent to your computer. A cookie is a small piece of data that is sent to your Internet browser from a web server and stored on your computer's hard drive. Information gathered using cookies helps us Improve your user experience. For example, a cookie can help the website load properly or can customize the display page based on your browser type and user preferences. You can choose whether or not to accept cookies by changing your Internet browser settings. Be aware that doing so may Impair or limit some functionality of the FNF Website.

Web Beacons. We use web beacons to determine when and how many times a page has been viewed. This information is used to improve our websites.

<u>Do Not Track.</u> Currently our FNF Websites do not respond to "Do Not Track" features enabled through your browser.

<u>Links to Other Sites</u>. FNF Websites may contain links to other websites. FNF is not responsible for the privacy practices or the content of any of those other websites. We advise you to read the privacy policy of every website you visit.

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# Use of Personal Information

FNF uses Personal Information for three main purposes:

- · To provide products and services to you or in connection with a transaction involving you.
- To improve our products and services.
- To communicate with you about our, our affiliates', and third parties' products and services, jointly or independently.

### When Information is Disclosed

We may make disclosures of your Personal Information and Browsing Information in the following circumstances:

- to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure;
- to nonaffiliated service providers who provide or perform services or functions on our behalf and who agree to
  use the information only to provide such services or functions;
- to nonaffiliated third party service providers with whom we perform joint marketing, pursuant to an agreement with them to jointly market financial products or services to you;
- to law enforcement or authorities in connection with an investigation, or in response to a subpoena or court order; or
- in the good-faith belief that such disclosure is necessary to comply with legal process or applicable laws, or to
  protect the rights, property, or safety of FNF, its customers, or the public.

The law does not require your prior authorization and does not allow you to restrict the disclosures described above. Additionally, we may disclose your information to third parties for whom you have given us authorization or consent to make such disclosure. We do not otherwise share your Personal Information or Browsing Information with nonaffiliated third parties, except as required or permitted by law.

We reserve the right to transfer your Personal Information, Browsing Information, and any other Information, in connection with the sale or other disposition of all or part of the FNF business and/or assets, or in the event of bankruptcy, reorganization, insolvency, receivership, or an assignment for the benefit of creditors. By submitting Personal Information and/or Browsing Information to FNF, you expressly agree and consent to the use and/or transfer of the foregoing information in connection with any of the above described proceedings.

Please see "Choices With Your Information" to learn the disclosures you can restrict.

### Security of Your Information

We maintain physical, electronic, and procedural safeguards to guard your Personal Information. We limit access to nonpublic personal information about you to employees who need to know that information to do their job. When we provide Personal Information to others as discussed in this Privacy Notice, we expect that they process such information in compliance with our Privacy Notice and in compliance with applicable privacy laws.

# **Choices With Your Information**

If you do not want FNF to share your information with our affiliates to directly market to you, you may send an "opt out" request by email, phone, or physical mail as directed at the end of this Privacy Notice. We do not share your Personal Information with nonaffiliates for their use to direct market to you.

Whether you submit Personal Information or Browsing Information to FNF is entirely up to you. If you decide not to submit Personal Information or Browsing Information, FNF may not be able to provide certain services or products to you.

For California Residents: We will not share your Personal Information or Browsing Information with nonaffiliated third parties, except as permitted by California law.

<u>For Nevada Residents</u>: You may be placed on our internal Do Not Call List by calling (888) 934-3354 or by contacting us via the information set forth at the end of this Privacy Notice. Nevada law requires that we also provide you with the following contact information: Bureau of Consumer Protection, Office of the Nevada Attorney General, 555 E. Washington St., Suite 3900, Las Vegas, NV 89101; Phone number: (702) 486-3132; email: BCPINFO@ag.state.nv.us.

<u>For Oregon Residents</u>: We will not share your Personal Information or Browsing Information with nonaffiliated third parties for marketing purposes, except after you have been informed by us of such sharing and had an opportunity to indicate that you do not want a disclosure made for marketing purposes.

Privacy Statement SCA0002402.doc / Updated: 05.18.18 Printed: 12.21.18 @ 03:23 PM by EP ----FWMN-TO18001562 <u>For Vermont Residents</u>: We will not disclose information about you creditworthiness to our affiliates and will not disclose your personal information, financial information, credit report, or health information to nonaffiliated third parties to market to you, other than as permitted by Vermont law, unless you authorize us to make those disclosures.

# Information From Children

The FNF Websites are meant for adults and are not intended or designed to attract persons under the age of eighteen (18). We do <u>not</u> collect Personal Information from any person that we know to be under the age of thirteen (13) without permission from a parent or guardian.

#### International Users

FNF's headquarters is located within the United States. If you reside outside the United States and choose to provide Personal Information or Browsing Information to us, please note that we may transfer that information outside of your country of residence for any of the purposes described in this Privacy Notice. By providing FNF with your Personal Information and/or Browsing Information, you consent to our collection, transfer, and use of such information in accordance with this Privacy Notice.

#### FNF Website Services for Mortgage Loans

Certain FNF companies provide services to mortgage loan servicers, including hosting websites that collect customer Information on behalf of mortgage loan servicers (the "Service Websites"). The Service Websites may contain links to both this Privacy Notice and the mortgage loan servicer or lender's privacy notice. The sections of this Privacy Notice titled When Information is Disclosed, Choices with Your Information, and Accessing and Correcting Information do not apply to the Service Websites. The mortgage loan servicer or lender's privacy notice governs use, disclosure, and access to your Personal Information. FNF does not share Personal Information collected through the Service Websites, except (1) as required or authorized by contract with the mortgage loan servicer or lender, or (2) as required by law or in the good-faith belief that such disclosure is necessary to comply with a legal process or applicable law, to enforce this Privacy Notice, or to protect the rights, property, or safety of FNF or the public.

# Your Consent To This Privacy Notice; Notice Changes

By submitting Personal Information and/or Browsing Information to FNF, you consent to the collection and use of the information in accordance with this Privacy Notice. We may change this Privacy Notice at any time. The revised Privacy Notice, showing the new revision date, will be posted on the FNF Website. Each time you provide information to us following any amendment of this Privacy Notice, your provision of information to us will signify your assent to and acceptance of the terms of the revised Privacy Notice for all previously collected Information and information collected from you in the future. We may use comments, information or feedback that you submit to us in any manner that we may choose without notice or compensation to you.

# Accessing and Correcting Information: Contact Us

If you have questions, would like to access or correct your Personal Information, or want to opt-out of information sharing for affiliate marketing, send your requests via email to <a href="mailto:privacy@fnf.com">privacy@fnf.com</a>, by phone to (888) 934-3354, or by mail to:

Fidelity National Financial, Inc. 601 Riverside Avenue, Jacksonville, Florida 32204 Attn: Chief Privacy Officer

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# ATTACHMENT ONE

# CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990

### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

- 1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter eracted on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Pokov.
  - (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
- 3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant:
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy:
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the Insured claimant had pald value for the insured mortgage or for the estate or interest insured by this policy.
- Unenforceability of the lien of the insured mortgage because of the inability or fallure of the insured at Date of Policy, or the inability or fallure of any subsequent owner of the Indebtedness, to comply with the applicable doing business taws of the state in which the land is situated.
- Invalidity or unenforceability of the lien of the Insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
- Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

### **EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

- Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
  - Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
- Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
- 3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
- 4 Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
- (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the Issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
- 6. Any lien or right to a lien for services, labor or material not shown by the public records.

Attachment One (05/08/16)

Exhibit 3 A-3-SCO-23-0003 Page 128 of 311

# CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (12-02-13) ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE

### **EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

- 1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
  - a. building;
  - b. zoning;
  - c. land use;
  - d. improvements on the Land;
  - e. land division; and
  - environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

- The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
- 3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
- 4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
- 5. Failure to pay value for Your Title.
- 6. Lack of a right:
  - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.

- The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.
- 8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence.
- 9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

# LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

 For Covered Risk 16, 18, 19 and 21, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1.00% of Policy Amount Shown in Schedule A	\$ 10,000.00
	\$2,500.00 (whichever is less)	
Covered Risk 18:	1.00% of Policy Amount Shown in Schedule A	\$ 25,000.00
	\$5,000.00 (whichever is less)	
Covered Risk 19:	1.00% of Policy Amount Shown in Schedule A or	\$ 25,000.00
	\$5,000.00 (whichever is less)	
Covered Risk 21:	1.00% of Policy Amount Shown in Schedule A or	\$ 5,000.00
	\$2,500.00 (whichever is less)	

# 2006 ALTA LOAN POLICY (06-17-06)

#### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (ki) the subdivision of land; or
  - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
- 2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy:
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or Ilmit the coverage provided under Covered Risk 11, 13, or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
- Unenforceability of the lien of the Insured Mortgage because of the Inability or failure of an insured to comply with applicable doing-business laws of the state where the Land is situated.
- Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that erises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
- Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
- Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### **EXCEPTIONS FROM COVERAGE**

Except as provided in Schedule B - Part II.[ t[or T]his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

# [PART I

[The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

- (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
- Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
- 3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
- Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
- (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
- 6 Any lien or right to a lien for services, labor or material not shown by the Public Records.]

### PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:]

# 2006 ALTA OWNER'S POLICY (06-17-06)

#### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (lii) the subdivision of land; or
  - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
- 2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy:
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
- 4 Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
- Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

### **EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of: [The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

- (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
- Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
- 3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
- Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
- 5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or In Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
- 6. Any lien or right to a lien for services, labor or material not shown by the Public Records.]
- 7. [Variable exceptions such as taxes, easements, CC&R's, etc., shown here.]

# ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY - ASSESSMENTS PRIORITY (04-02-15) EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

- (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (li) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
  - or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
  - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- 2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy:
  - (c) resulting in no toss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
- Unenforceability of the lien of the Insured Mortgage because of the Inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
- Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
- 6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
- Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
- 8. The fallure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
- Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.
- 10. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
- 11. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

# Notice of Available Discounts

Pursuant to Section 2355.3 in Title 10 of the California Code of Regulations Fidelity National Financial, Inc. and its subsidiaries ("FNF") must deliver a notice of each discount available under our current rate filing along with the delivery of escrow instructions, a preliminary report or commitment. Please be aware that the provision of this notice does not constitute a walver of the consumer's right to be charged the filed rate. As such, your transaction may not qualify for the below discounts.

You are encouraged to discuss the applicability of one or more of the below discounts with a Company representative. These discounts are generally described below; consult the rate manual for a full description of the terms, conditions and requirements for such discount. These discounts only apply to transactions involving services rendered by the FNF Family of Companies. This notice only applies to transactions involving property improved with a one-to-four family residential dwelling.

Not all discounts are offered by every FNF Company. The discount will only be applicable to the FNF Company as indicated by the named discount.

# FNF Underwritten Title Companies

CTC - Chicago Title Company CLTC - Commonwealth Land Title Company FNTC - Fidelity National Title Company FNTCCA - Fidelity National Title Company of California FNTIC - Fidelity National Title Insurance Company TICOR - Ticor Title Company of California LTC - Lawyer's Title Company

# Underwritten by FNF Underwriters

CTIC - Chicago Title Insurance Company CLTIC - Commonwealth Land Title Insurance Company FNTIC - Fidelity National Title Insurance Company CTIC - Chicago Title insurance Company CLTIC - Commonwealth Land Title Insurance Company

### **Available Discounts**

# CREDIT FOR PRELIMINARY TITLE REPORTS AND/OR COMMITMENTS ON SUBSEQUENT POLICIES (CTIC, FNTIC)

Where no major change in the title has occurred since the issuance of the original report or commitment, the order may be reopened within twelve (12) to thirty-six (36) months and all or a portion of the charge previously paid for the report or commitment may be credited on a subsequent policy charge.

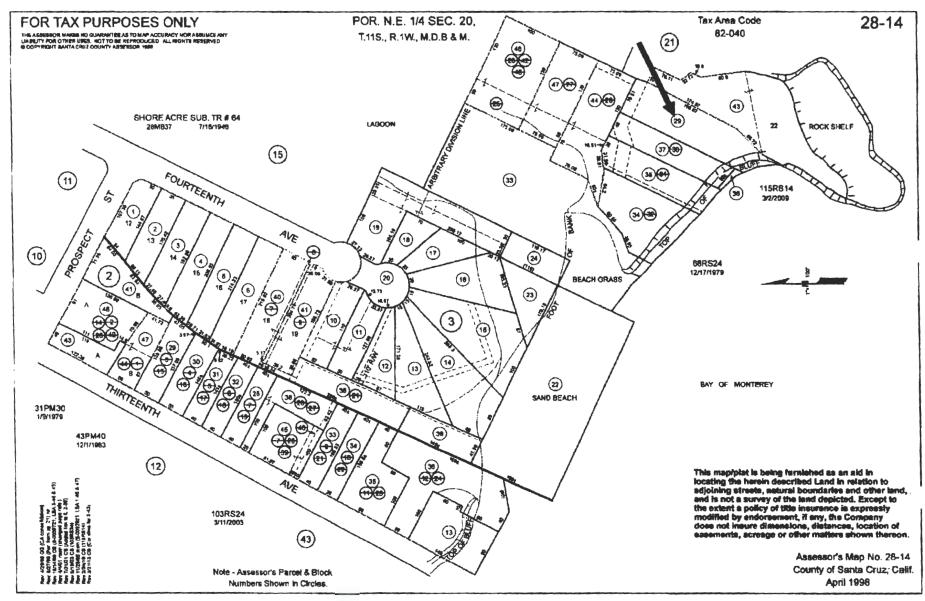
### **DISASTER LOANS (CTIC, CLTIC, FNTIC)**

The charge for a Lender's Policy (Standard or Extended coverage) covering the financing or refinancing by an owner of record, within twenty-four (24) months of the date of a declaration of a disaster area by the government of the United States or the State of California on any land located in said area, which was partially or totally destroyed in the disaster, will be fifty percent (50%) of the appropriate title insurance rate.

#### CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS (CTIC. FNTIC)

On properties used as a church or for charitable purposes within the scope of the normal activities of such entitles, provided said charge is normally the church's obligation the charge for an owner's policy shall be fifty percent (50%) to seventy percent (70%) of the appropriate title insurance rate, depending on the type of coverage selected. The charge for a lender's policy shall be thirty-two percent (32%) to fifty percent (50%) of the appropriate title insurance rate, depending on the type of coverage selected.

Notice of Available Discounts SCA0002402.doc / Updated: 05.18.18 Printed: 12.21.18 @ 03:23 PM by EP ---FWMN-TO18001562



**ELECTRONICALLY FILED** Superior Court of California County of Santa Cruz 8/7/2020 3:09 PM Alex Calvo, Clerk 1 IRA JAMES HARRIS, SB #99760 By: Sandra Gonzalez, Deputy LAW OFFICES OF IRA JAMES HARRIS 2 One Camino Sobrante, Suite 208 P.O. Box 1478 3 Orinda, CA 94563 4 Telephone: (925) 258-5100 Facsimile: (925) 281-4977 5 Attorney for Plaintiffs 6 7 SUPERIOR COURT OF CALIFORNIA 8 **COUNTY OF SANTA CRUZ** 9 10 11 No.: 19CV00673 FOWLER PACKING COMPANY, a California Corporation, WILLIAM P. AND LINDA L. 12 DECLARATION OF EUGENE SHKLAR IN SULLIVAN, TRUSTEES OF THE SULLIVAN SUPPORT OF PLAINTIFFS' FAMILY REVOCABLE LIVING TRUST DATED ) 13 APPLICATION FOR A DEFAULT MAY 2, 1996; MARK A. AND SUZANNE J. JUDGMENT AGAINST THE MEMBERS CAUWELS, TRUSTEES OF THE MARK AND OF THE PUBLIC ON THE FIRST AND 14 SUZANNE CAUWELS FAMILY TRUST SECOND CAUSES OF ACTION FOR INITIALLY CREATED ON JULY 30, 1992; **QUIET TITLE** NORMAN L. CHAPMAN AND CAROL S. 15 CHAPMAN, TRUSTEES OF THE 2000 NORMAN L. CHAPMAN & CAROL S Date: 16 CHAPMAN REVOCABLE TRUST UNDER Time: **INSTRUMENT DATED JUNE 6, 2000; DAWNA** Dept.: 17 SUTTON, TRUSTEE OF THE SUTTON FAMILY  $\langle$ Judge: Trial Date: None REVOCABLE TRUST DATED OCTOBER 6, 18 1997 19 Complaint Filed: February 27, 2019 Plaintiffs, 20 21 VS. COUNTY OF SANTA CRUZ, a Public Entity; 22 CALIFORNIA COASTAL COMMISSION, a Public Agency; ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE 23 RIGHT, TITLE, ESTATE, LIEN OR INTEREST 24 IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS 25 TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO; and DOES 1 to 100, inclusive. 26 Defendants. 27 28

DECLARATION OF EUGENE SHKLAR ISO PLAINTIFFS' APPLICATION FOR DEFAULT JUDGMENT

I, Eugene Shklar, hereby declare:

- 1 am over 18 years of age and am now a resident of the State of Florida. As a Trustee of
  the 1993 Shklar Revocable Trust dated June 1, 1993, I previously owned the property located at 70
  Geoffroy Drive, Santa Cruz, California otherwise known as APN 028-143-35. I am competent to testify
  to the following facts, which are true of my own personal knowledge.
- 2. I purchased 70 Geoffroy Drive, Santa Cruz, California in April 2001. My wife and I lived there as our primary residence from May 2001 until we sold the property in June 2009. At that time of my purchase, an old earthen pathway extended down the steep slope from 70 Geoffroy Drive to a sandy area but was blocked by a 5-6 foot high, chain link fence with a locked gate at the top of the northeastern bluff off the private drive. There was also attached to the wooden utility pole in front of the locked gate in the fence a hardware-store plastic "no trespassing" sign that because of its weathered condition appeared to have been there for quite some time. I purchased from Richard and Wendy Lewis Family Trust. Mrs. Lewis, through her real estate agent, had disclosed that the pathway, fence and gate were present when they purchased in 1993 and reported that these improvements appeared to be decades old at that time. The Lewises and their toddler child had not used the pathway given its dangerous condition and rocks near its bottom and reported that Mr. Dilworth at 63 Geoffroy Drive would allow any neighbor access through the locked gate on his property.
- 3. During my ownership of the 70 Geoffroy Drive property I verified the history of the fence and eastern slope by researching the area by obtaining archival aerial photographs. Attached hereto as Exhibit G is a true and correct copy of an August 27, 1963 aerial photograph I obtained during my ownership as well as a close-up view of the private driveway at the end of Geoffroy Drive.
- 4. While the pathway to the beach was dilapidated and very difficult to traverse, we would occasionally encounter a person trespassing across our driveway, who would attempt to climb over the fence. I had a number of confrontations with such trespassers, who damaged the fence and gate, and littered our private drive with cigarette butts and other debris.
- 4. As a result, I chose to permanently close off the access. I added some barbed wire to the chain link fence; I installed a wooden fence at the base of the bluff (also with barbed wire); In May and

DECLARATION OF EUGENE SHKLAR ISO PLAINTIFFS' APPLICATION FOR DEFAULT JUDGMENT

June 2001 I purchased and posted three (3) professionally made metal "No Trespassing" "Private Property" signs (which were 12 by 18 inches in size): two on the chain link fence facing the driveway and the third facing the beach area on the constructed fence at the bottom of the bluff. I also posted two (2) professionally made metal signs (each 18 by 24 inches in size): one -on its own metal pole at street level entering the private driveway and the other on its own metal pole next to the aforementioned wooden utility pole. These two signs stated that the driveway was a "Private Road" and stated "Do Not Enter" as there was "No Beach Access" and that "Right to Pass By Permission and Subject to Control of Owners CC 1008". I then allowed the thorny blackberries and other vegetation between the top fence and the bottom fence to overgrow. I also hired a uniformed security guard to sit in the driveway near the gate and fence for two days on June 9 and 10 of 2001. In a few months the vegetation completely covered the fence, gate and pathway, and the trespassers were trained to avoid our area entirely. These efforts, along with our own use of 63 Geoffroy to access the beach, served to discourage further trespassers. Attached as Exhibit H is a true and correct copy of the May 24, 2001 approved order for the signs I had installed and a copy of my credit-card statements from that time showing I paid the sign vendor in two installments. Attached as Exhibits 1, J and K are aerial photographs from californiacoastline.org dated September 30, 2002. October 3, 2009 and October 4, 2013 of the private drive wherein the 18 x 24 CC 1008 sign at the driveway entrance is visible.

5. I understand that each of the homeowners who comprise Geoffroy Homeowners Association (60, 63, 70, 80 and 90 Geoffroy Drive) has taken their own action to prevent trespassers from crossing their property or parking in the private driveway to access Twin Lakes/Black Beach. All these efforts were very successful these trespass activities effectively ceased in June 2001.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 6. 2020 at

ACKSONVILLE , Florida.

Eugen Shhlar

**Eugene Shklar** 

DECLARATION OF EUGENE SHKLAR ISO PLAINTIFFS' APPLICATION FOR DEFAULT JUDGMENT

28

Santa Cruz Superior Court Action No. 19CV00673

Plaintiff's Request For Default Judgment Quieting Title

DOCUMENT: Exhibit G to **Declaration of Eugene Shklar**- August 27, 1963 Aerial Photograph of end of Geoffroy Drive

**EXHIBIT G** 

Exhibit 3 A-3-SCO-23-0003 Page 138 of 311



Santa Cruz Superior Court Action No. 19CV00673

Plaintiff's Request For Default Judgment Quieting Title

DOCUMENT: Exhibit II to **Declaration of Eugene Shklar**- Approved Order for Signage and credit card statements showing purchase and installation of signs

**EXHIBIT H** 

Exhibit 3 A-3-SCO-23-0003 Page 140 of 311

# PRIVATE ROAD DO NOT ENTER

24

**NO BEACH** ACCESS

RIGHT TO PASS BY PERMISSION AND SUBJECT TO CONTROL OF OWNERS CC 1008

16" X 24" single sided .063 aluminum white background black border & smaller lettering larger lettering in red \$65 (+ tax) per sign 12"

# PRIVATE PROPERT

No TRESPASSING

18"

PC cos

May 24, 2001

To: Gene & Daymel Shidar From: Cindy DePremio

Re: proof and quote for signs

Above quote does not include installation.

Please PROOF and call with changes or a final okay.

Thenics, Cindy



728-0401 761-8409

12" X 18"
single sided
.063 eluminum
white background
black border & smaller lettering
targer lettering in red
\$42 (+ tax) per sign Approved.

Completed 9

devivered by

Approved.

Hirsday Afteenoon

Eugun Shala 5/31

Ca 3 p.m.

Exhibit 3 A-3-SCO-23-0003 Page 141 of 311

tement/C	cooling Date	Total Credit Line \$50000	Available Credit Line Co. \$35275	\$24000	\$24000	\$14724.50
,,			Amount over Credit Line \$0.00 + Activity Since Leat Stateme	Post Due	Minimum Due \$306.00	Minimum American Du
nii Date:	Post Date	Reference Number	Activity Since Last Stateme	At P	A	Amoret
	6/13	R1799575	ACTIVAY SINCE LONESTATEMENT  ELECTRONIC PAYMENT-THANK ROSS STORES #187 FRY'S ELECTRONICS W3 T.J. MAXX W418 NMS°FOOD & WINE MAG PIER 1 W211 00002477 KINKO'S CAPIJOLA SENATE FURNITURE GALLER ROSS STORES #187 THE FISH LADY POTTERY PLANET THE SHORENSTEN COMPANY ZEN TRADING COMPANY ZEN TRADING COMPANY ZEN TRADING COMPANY LONGS DRUG STORES #045 78 QUIK STOP MARKET USPS 0568370110 ORCHARD SUPPLY #60 RALPHS #0918 LONGS DRUG STORES #045 SAFEWAY STORE00003053 SHELL NO. 27426303304 LONGS DRUG STORES #045 SAFEWAY STORE00003053 SHELL NO. 27426303304 LONGS DRUG STORES #329 BLACKS BEACH CAFE PRISCILLA MURPHY REAL CRATE & BARREL-409 CRATE & BARREL-409 CRATE & BARREL-409 CRATE & BARREL-509 CRATE & BARREL-509 CINGULAR WIRELESS B HART'S FOR THE HOME	K YOU	C4	-7,528.29 -48.46
5/24	5/26	XRHRKR30 6DZ2L7CN	ROSS STORES #187 FRY'S FLECTRONICS #3	PALO ALTO	CA	-11 R7
5/24 5/25 6/09	5/26 5/26 6/09	BSBOXP30	T.J. MAXX #418	REDWOOD CITY	CA	-22.67
6/12	6/12 1	H5N9R600 H=98MP46	NAS*FOOD & WINE MAG	SAN MATEO	CA	-27.00
5/16 5/24 5/24	6/16 5/26 5/26	MH74WLSF	KINKO'S CAPITOLA	CAPITOLA	CA	7.0
5/24	5/26	QP8MMWD3	SENATE FURNITURE GALLER	CAPITOLA	CA	614.11 50.00
5/24 5/25 5/25 5/25 5/25	5/26	06HRKR30	THE FISH LADY	SOQUEL	CA	13.20
5/25	5/26 5/26 5/26 5/26 5/26	170612WC 29TXK184 9PRQ4284 20TNJ594 DB7NX96P	POTTERY BARN M/O	800-9229934	CA	256.60 269.31
/25	5/26	9PRQ4284	THE SHOPENSTEN COMPANY	SAN FRANCISC	COCA	28.0
1/201		DB7NX96P	ZEN TRADING COMPANY	SANTA CRUZ	CA	18.7
/26	5/26 5/26 5/27 5/27 5/29	K994YW84 LBR2HR30	HOME ENTERTAINMENT EXCH	SANTA CRUZ	CA	8.4
5/27	5/26	ZBYWPOKC	LONGS DRUG STORES #045	CAPITOLA	ČÃ	19.6
5/27	5/27	3BYWP9KC •52Q2FFD 8PKR8810	78 QUIK STOP MARKET	SOOUEL	CA	35.8 11.2
3/29 1	5/29	8PKR8810	ORCHARD SUPPLY #60	AAPITOLA	CA	39.9
5/29 5/29	5/29	ZLZ1YR30 BOPYXBQ9 BZ8XP9KC	RALPHS HO918 SEW	CAPITOLA	CA	16.6
5/29 5/30	5/29	8Z8XP9KC LP70SSD6	LONGS DRUG STORES WU45	REDWOOD CITY	CA I	30.0
5/30	5/30	7XCSH4J4	SHELL NO. 27426303304	SANTA CRUZ	CA	34.00
5/30 1	5/30	WOJR6JKC	LONGS DRUG STORES #329	REDWOOD CITY	CA	5.93 94.83
5/31 5/31 5/31 5/31	5/31 5/31 5/31	OOSTSJOO JMNK8VFD	PRISCILLA MURPHY REAL	FT. MYERS	FL	5,463.4
5/31	5/31	N+CLWYOO.	CRATE & MARREL-409	PALO ALTO	CA	1,223.80
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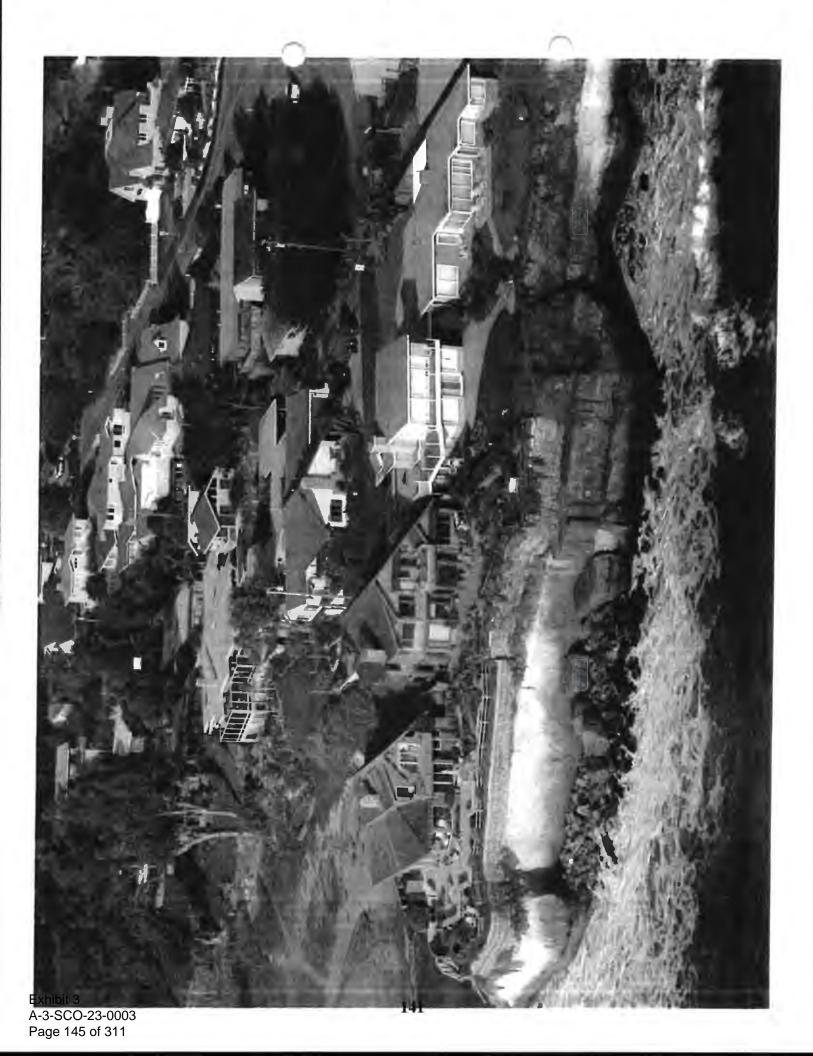
Santa Cruz Superior Court Action No. 19CV00673

Plaintiff's Request For Default Judgment Quieting Title

DOCUMENT: Exhibit I to **Declaration of Eugene Shklar**- September 30, 2002 Aerial Photograph of end of Geoffroy Drive from Californiacoastline.org showing 18 x 24 CC 1008 Signage

**EXHIBIT I** 

Exhibit 3 A-3-SCO-23-0003 Page 144 of 311



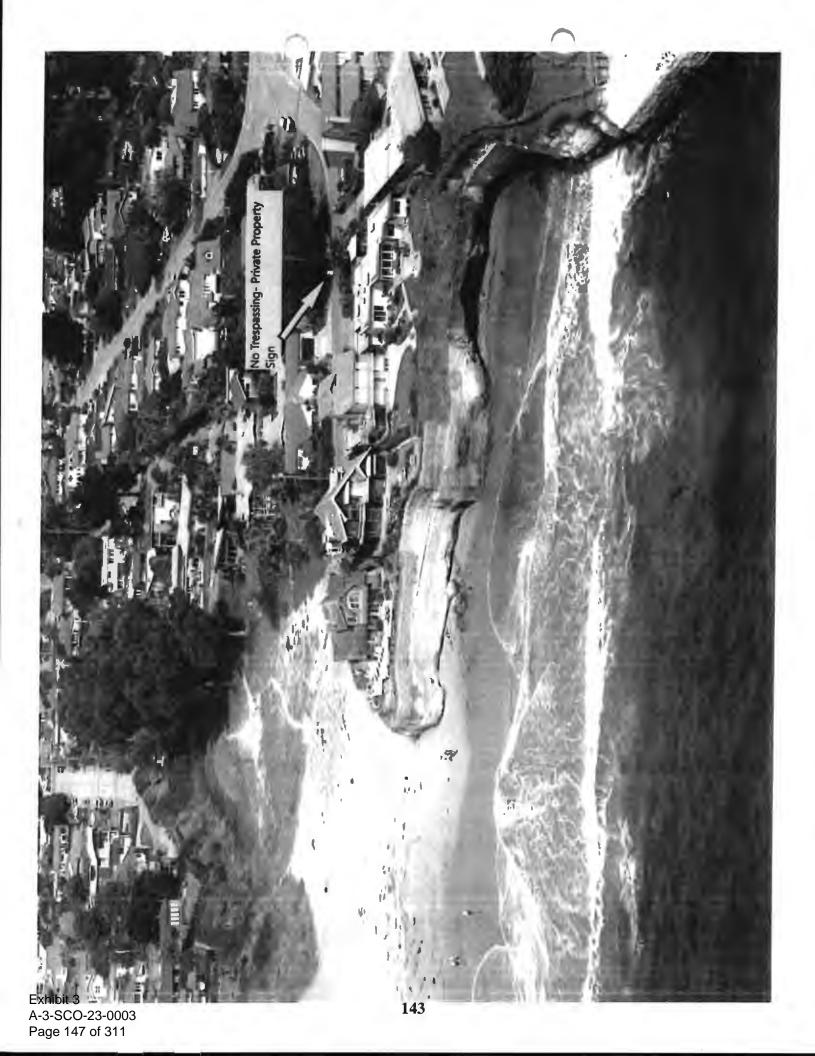
Santa Cruz Superior Court Action No. 19CV00673

Plaintiff's Request For Default Judgment Quieting Title

DOCUMENT: Exhibit J to **Declaration of Eugene Shklar**- October 3, 2009 Aerial Photograph of end of Geoffroy Drive from Californiacoastline.org showing 18 x 24 CC 1008 Signage

**EXHIBIT J** 

Exhibit 3 A-3-SCO-23-0003 Page 146 of 311

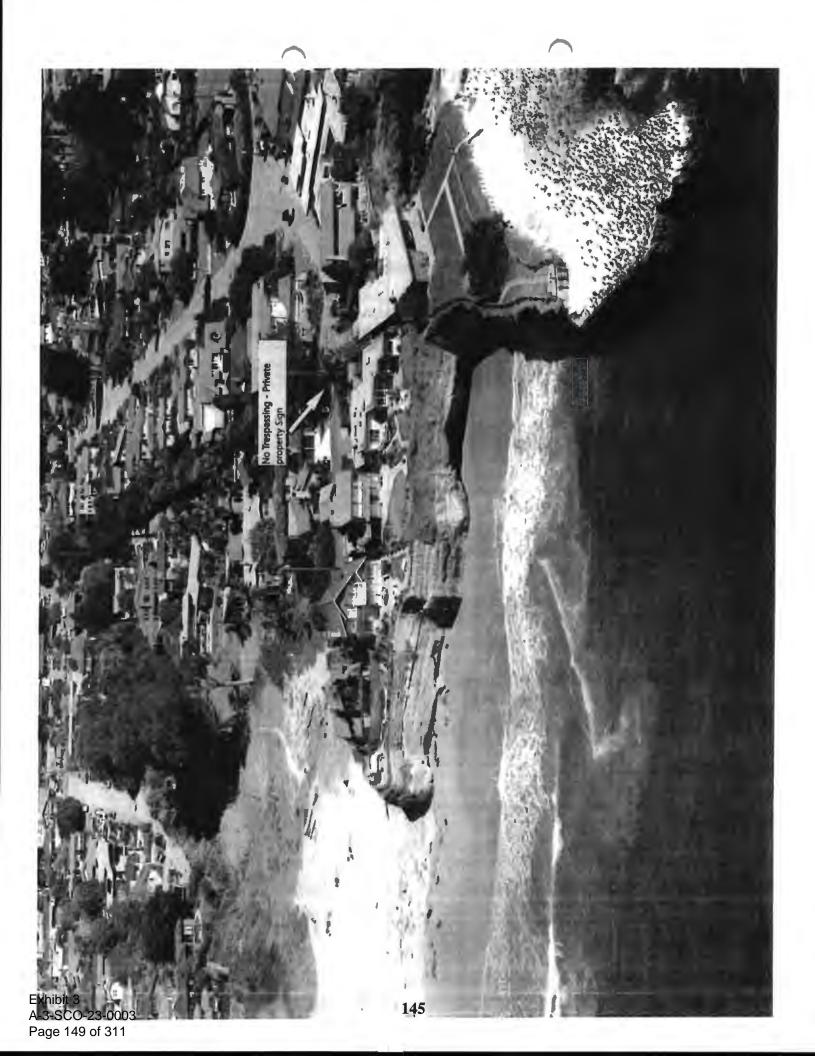


Santa Cruz Superior Court Action No. 19CV00673

Plaintiff's Request For Default Judgment Quieting Title

DOCUMENT: Exhibit K to **Declaration of Eugene Shklar**- October 4, 2013 Acrial Photograph of end of Geoffroy Drive from Californiacoastline.org showing 18 x 24 CC 1008 Signage

**EXHIBIT K** 



# PROOF OF SERVICE

[C.C.P. Section 1013, 2015.5]

I am a citizen of the United States, a resident of the State of California, and am employed in the County of Contra Costa, State of California. I am over eighteen (18) years of

age and am not a party to the above-entitled action. My business address is the law Offices of Ira James Harris, One Camino Sobrante, Suite 208, P.O. Box 1478, Orinda, California

94563. On the date referenced below, I served the following document(s) in the manner

indicated below on the person(s) listed on the attached Service List:

In re

Fowler Packing Company v. County of Santa Cruz Santa Cruz Superior Court Action No. 19CV00673
Our File No. 1142.1

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27 28 Declaration of Eugene Shklar in support of Plaintiff's Application for Default Judgment on 1st and 2nd Causes of Action for Quiet Title Pursuant to CCP Section 579; with Exhibits G through K.

U.S MAIL [CCP §§ 1013(a) & 2015.5]: by placing the document(s) listed above in a scaled envelope, with First Class postage thereon fully prepaid, and deposited the same in the United States mail at Orinda, California, addressed as set forth on the attached Service List. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing, which deposits mail to the US Postal Service on the same day, with postage fully prepaid in the ordinary course of business.

E-MAIL OR FACSIMILE TRANSMISSION [CCP §§ 1010.6, 1013(e), 2015.5 & CRC 2008]: Based on court order or per agreement of the parties to accept service, I caused the documents to be sent to the listed persons at the e-mail or facsimile

PERSONAL DELIVERY: by personally delivering the document(s) listed above to the person(s) at the address(es) set forth on the Service List.

numbers listed on the attached Service List. I did not receive any error message or other indication that the transmission was unsuccessful. I am familiar with the

firm's practices in this regard and the documents were transmitted in the regular

OVERNIGHT DELIVERY [CCP §§ 1013(c) & 2015.5]: by placing the document(s) listed above in a sealed envelope marked next-day delivery by

(State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 7, 2020 at Orinda, California.

IRA JAMES HARRIS

PROOF OF SERVICE

course of business.

- 1 -

Exhibit 3
A-3-SCO-23-0003
Page 150 of 311

# SERVICE LIST

In re

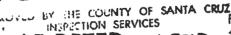
Fowler Packing Company v. County of Santa Cruz Santa Cruz Superior Court Action No.19CV00673
Our File No. 1142.1

County of Santa Cruz	Daniel Zazueta Santa Cruz County Counsel 701 Ocean Street, Room 505 Santa Cruz, CA 95060	TC: (831) 454-2040 Fax: (831) 454-2115 E: daniel.zazueta@santacruzcounty.us
California	Xavier Becerra	TC: (510) 879-0279
Coastal	David G. Alderson	Fax: (510) 622-2270
Commission	Joel S. Jacobs Attorney General of California 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550	E: Joel.Jacobs@doj.ca.gov

# CALIFORNIA COASTAL COMMISSION

ENTRAL COAST AREA OFFICE 25 PRONT STREET, SUITE 300 ANTA CRUZ, CA 95080 100) 427-4862 EARING NIPAIRED: (418) 904-5200





NO147060 15JUING

Notice: These plans and specifications must remain on the job site at all times. They shall not be altered without the written permission PAPF REDO Reportion department

**Regular** Calendar

Filed: 01/17/97 180th day: 07/06/97

Staff: SM-SC

Staff Report: 05/21/97 Hearing Date: 06/11/97

ADOPTED WITH SPECIAL CONDITION 8 REVISED BY 6/6/97 MEMO

APPROVED ON CONSENT CALENDAR 12-0

APPLICATION NUMBER: 3-97-020

APPLICANT: RICHARD AND WENDY LEWIS

PROJECT LOCATION: 70 Geoffroy Drive, Black's Point at Twin Lakes State Beach, Santa

Cruz County

PROJECT DESCRIPTION: Stabilization of coastal bluff by filling seacave with concrete.

removing destabilized portion of bluff, building reinforced concrete seawall, installation of rock bolting on bluff face, and building bluff

top gabion retaining wall and drainage system.

LOCAL APPROVALS RECEIVED: Santa Cruz County Permit No. 95-0198

SUBSTANTIVE FILE DOCUMENTS: Emergency Permit File No. 3-95-44-G; Foxx, Nielsen and

Associates, "Geologic Investigation for 70 Geoffroy Drive",

September, 1995; Haro, Kasunich and Associates, Inc., "Response to Coastal Commission Letter Dated 24 October 1995 Requesting Supplemental Geologic and Geotechnical Information", December 1, 1995; Haro, Kasunich and Associates, Inc., "Response to Coastal Commission's 2 August 1996 Letter Regarding Need for Riprap at Base of Structure and Wave Overtopping of Structure", January 15, 1997; Santa Cruz County 1994 General Plan and Local

Coastal Program.

# SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the project with special conditions which address future maintenance and monitoring of the shoreline structures, and provide for coordination with other agency approvals. As conditioned, the development will minimize adverse impacts to natural shoreline processes, will be compatible with the appearance of the surrounding bluffs, will not adversely impact beach access, and will abate geologic hazards posed to beachgoers and residents.

LEWIS DOC. Central Coast Area Office

# I. STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

# Approval with conditions

The commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the Coastal Act; is located between the nearest public road and the sea and conforms with public access and recreation policies of the Coastal Act; and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

# II. STANDARD CONDITIONS

Attached as Exhibit 1.

# III. SPECIAL CONDITIONS

- 1. Scope of Permit. This permit authorizes the filling of the seacave with concrete, removing the destabilized portion of bluff, building the reinforced concrete seawall, Installation of rock bolting on the bluff face, and Installing a "whaler beam", previously developed under the permit No. 3-95-44-G. In addition, this permit, once issued, authorizes the reengineering of the riprap revetment, and monitoring and maintenance activities, as required by Special Conditions 3 and 5, below. The gablon baskets located above and landward of the concrete seawall are within the coastal development permit jurisdiction of the County of Santa Cruz, and subject to County review and approval. Other than the reengineering of the riprap as required by Special Condition 3, and the monitoring and maintenance activities required by Special Condition 5, no additional development may take place on or seaward of the bluff face unless this permit is amended or a separate permit is issued by the Coastal Commission.
- 2. <u>Supplemental Geotechnical Report</u>. PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for Executive Director review and approval, a supplemental geotechnical report, prepared by a qualified geotechnical consultant, which provides the recommendations necessary to reengineer the existing rock armor (riprap) revetment fronting the applicant's property to a 2:1 horizontal to vertical slope.
- 3. Reengineering of Riprap Revetment. PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for Executive Director review and approval, construction plans prepared by a qualified geotechnical engineer, for reengineering the riprap revetment fronting the applicant's property to a 2:1 horizontal to vertical slope, in accordance with the supplemental geotechnical report required by Special Condition 2. At a minimum, the revetment construction plans shall provide the following:
- a. Identification of the maximum area to be covered by the reengineered riprap, based upon a 2:1 slope from the toe of bluff, utilizing the permanent surveyed benchmark identified in the plans prepared by Dunbar and Craig dated November, 1995. More gradual slopes, at a maximum flatness of a 3:1 slope, may be allowed at either end of the revetment fronting the applicant's property if necessary to provide an effective tie-in to adjacent riprap.

- b. Timing of the reengineering, taking into account the infrequent periods during which the riprap is completely exposed. The permittee shall be responsible for reengineering the riprap revetment fronting the property as soon as beach conditions allow. In order to accomplish this, the revetment plan shall identify preliminary construction dates during low tide periods of the late winter/early spring months of 1998, when the rocks are most likely to be exposed. Two weeks prior to the preliminary construction dates identified by the revetment plan, the permittee shall either: initiate the notification procedures identified in part c. of this condition; or, provide, for Executive Director review and approval, written evidence that the project engineer has determined that site conditions will not allow such work to take place, accompanied by the basis for such a determination and the identification of subsequent construction periods anticipated to be appropriate. This procedure shall be repeated until the revetment has been properly reengineered. Unless this permit is amended to allow otherwise, reengineering of the riprap shall be completed within 5 years of this issuance of this permit.
- c. Construction operations: The revetment plan shall identify the construction procedures that will be utilized to reengineer the riprap, which avoid adverse impacts to the marine environment and public access and recreation. At a minimum, the plan shall identify all areas subject to construction activities and staging, and include provisions to ensure that: construction materials and equipment do not enter Bay waters; that any of the existing rocks which can not be reused in the reengineered revetment are removed from the beam and recycled or disposed of in a landfill; and, that at the completion of construction, the site be restored to the natural beach condition which existed immediately prior to the commencement of construction. Copies of the final staff report, with the this condition highlighted, shall be attached to the construction contract and to bid documents (if any are used), to insure that the contractors hired to perform the work have been made fully aware of the terms of this permit.
- 4. Extension of Riprap Reengineering. By future amendment to this permit, the reengineering of the riprap to a 2:1 slope should also be undertaken along portions of the revetment upcoast and downcoast of the portion fronting the permittee's property. Although not required by this permit, the permittee is strongly encouraged to inform the adjacent property owners (APN's 028-143-34, 028-143-37, and 028-143-29) of this option and the structural benefits of reengineering the entire riprap revetment as a uniform structure. Note: Applies only to reengineering of riprap on public lands within the Coastal Commission's original jurisdiction.
- 5. Monitoring and Maintenance Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for Executive Director review and approval, a Monitoring and Maintenance Plan which provides for the following:
- a. Monitoring. The coastal protection structures (including the riprap revetment, the concrete seacave plug, vertical tiedback seawall/retaining wall, and the tiedback whaler beam) shall be inspected by qualified geotechnical consultant at least once a year at the end of the winter season, and after any major storm event. At a minimum, the monitoring component of this plan shall provide for the documentation of: any movement of riprap; spalling, cracking, and undermining of the concrete seawall and seacave plug; rust or loosening of the tieback anchors; exposure of the imbedded whaler beam; effectiveness of the installed drainage system, especially with respect to maintaining the structural integrity of the seawall; any impact to adjacent properties attributable to the structures; and, any change in coloration of exposed concrete.

- b. Maintenance. The maintenance component of the plan shall include provisions for: maintaining the reengineered riprap revetment within the maximum footprint identified by the revetment construction plan required by Special Condition 3; patching of any spalled, cracked, or discolored concrete with concrete or mortar patches colored to match the natural bluff; maintaining appropriate tensions of the tieback anchors; and, mitigating any adverse impacts to adjoining properties attributable to the shoreline structures. Implementation of these maintenance activities shall be subject to the reporting provisions of the Maintenance and Monitoring Plan, required by part c. of this condition. The potential need to expand the vertical seawall, construct a vertical cut-off wall, install additional reinforced concrete mats, or conduct any additional construction not contained in the monitoring and maintenance plan shall be subject to Coastal Commission review and approval, through either an amendment to this permit or the issuance of a new coastal development permit.
- Reporting. The Monitoring and Maintenance Plan shall identify the requirement to notify the Executive Director of any proposed maintenance activity prior to implementation. All maintenance activities must be consistent with the Monitoring and Maintenance Plan as approved by the Executive Director. The reporting component of the plan shall also identify that those maintenance activities involving the movement of riprap or the presence of construction equipment on the beach shall be subject to the notification requirements and construction. procedures contained in the revetment plan; and, that within 6 weeks following the completion of the riprap reengineering, the permittee shall submit a written report prepared by the project engineer, for Executive Director review and approval, confirming that the reengineering has taken place consistent with the approved plans required by Special Condition 3. Additionally, the reporting component of the Monitoring and Maintenance Plan shall identify that by April 15, 2002 the permittee shall submit, for Executive Director review, an engineering inspection report prepared by a certified Geotechnical engineer, which incorporates all of the monitoring documentation required by part a. of this condition, as well as a detailed description of the maintenance activities undertaken pursuant to part b, of this condition, an evaluation of their effectiveness, and recommendations for any further corrective actions needed. The reporting component shall further identify that equivalent reports shall be submitted for Executive Director review every five years following the initial report, for the lifetime of the project.
- 6. Other Agency Approvals. PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for Executive Director review and approval, written evidence of authorization for the as-built seawall, as well as the reengineering of the revetment and maintenance and monitoring activities required by Special Conditions 3 and 4, or evidence that no such approvals are necessary, from the following agencies:
  - us Army Corps of Engineers;
  - b. Monterey Bay National Marine Sanctuary;
  - c. State Lands Commission;
  - d. California Department of Fish and Game;
  - e. Regional Water Quality Control Board; and,
  - f. Santa Cruz County Planning Department.

- 7. Legal Documentation. PRIOR TO THE ISSUANCE OF THE COASTAL
  DEVELOPMENT PERMIT, the applicant shall record a deed restriction, in a form and content
  acceptable to the Executive Director, which runs with the land, binds all successors and
  assigns, is recorded free of prior liens that the Executive Director determines may affect the
  enforceability of the restriction, and provides the following:
- a. Walver of Liability: (1) that the applicant understand that the site may be subject to extraordinary hazard from waves during storms and from related erosion, and, (2) the permittees unconditionally waive any claim of liability on the part of the Commission or its successors in interest for damage from such hazards and agrees to indemnify and hold harmless the Commission, its offices, agents, and employees relative to the Commission's approval of the project.
- b. Maintenance Agreement: that the applicant accepts the responsibility for reengineering the revetment, implementing the monitoring and maintenance requirements of this permit (as specifically described in Special Conditions 2, 3, and 5), and for funding all costs of the project including future monitoring, maintenance, and repair.
- Timeframe for Compliance. Compliance with Special Conditions 2, 3, 5, 6, and 7 is required prior to the issuance of the permit, and shall be pursued in a diligent manner. These conditions shall be complied with by January 1, 1998, unless otherwise extended by the Coastal Commission (or Executive Director) through an amendment to this permit. Such amendment must be requested by the applicant, in a form which can be filed by the Commission consistent with 14 CCR 13166, no later than December 1, 1997.

  Memo
- 9. Notification Requirements. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall provide, for Executive Director review and approval, evidence that the following agencies have been notified of the riprap revetment construction activities and time period: the California Coastal Commission Central Coast Area Office; Santa Cruz County Planning Department; California Department of Parks and Recreation; US Army Corps of Engineers; and, the Monterey Bay National Marine Sanctuary. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall also provide written evidence that the appropriate permit allowing for construction equipment access to the site has been obtained from the California Department of Parks and Recreation.

# IV. FINDINGS AND DECLARATIONS

# A. Project Background and Description:

On March 24, 1995, a large, joint bounded bedrock block failed from the coastal bluff on the seaward portion of the Lewis property, causing an open chasm in the Lewis yard, and creating a hazard to beach users due to the potential for further movement of the failed block and additional bluff failure.

The failed portion of the bluff, a block of approximately 15' wide, 25' long, and 25' high, was precariously located on rocks at the base of the bluff, and in danger of toppling over. In addition, the geotechnical consultants inspecting the site found evidence that an additional joint

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bounded portion of the bluff, located above a seacave at the base of the bluff, was badly fractured and in danger of collapse (see Exhibit 5). In discussions with the property owners and their geotechnical engineers, it was believed that the hazards posed to the Lewis property and beachgoers could be abated by dismantling the failed block, filling the seacave with concrete, and rock bolting the unstable block to the bluff. On April 14, 1995, the Central Coastal Area office of the Coastal Commission issued an Emergency Permit (No. 3-95-44-G) authorizing these activities. Work commenced on April 17, 1995, when the tide was low enough to allow for the pouring of concrete into the cave without coming into contact with Bay waters. The fallen bedrock pinnacle was then dismantled to a level to allow for rock bolting of the unstable portion of the bluff.

On May 9, 1995, the Commission staff discovered that in addition to the work authorized under the Emergency Permit, that the property owners' consultants had installed vertical steel beams on the beach Immediately adjacent to the base of the bluff, as a first step in the construction of a seawalt/retaining wall. Upon investigating this development as an enforcement action, it was explained that the rook bolting which had been planned to secure the unstable block was determined to be infeasible by the project consultant, due to the concern that such activity would break apart this portion of the bluff. In order to adequately stabilize the bluff, the consultant determined that it was necessary to cradle this portion of the bluff with a retaining wall (which, due to its location, would also function as a seawall). On May 15, 1995, Engrebby Permit No. 3-94-44-G was amended to allow for the additional development of the retaining wall, subject to conditions including plan approval by the Santa Cruz County Building Department. During the time period required for plan preparation and review, temporary braces were used to prevent further bluff failure.

As plan preparation and review progressed, it was determined that in order to prevent the unstable portion of the bluff from collapsing on the roof of the seacave fill, it was necessary to imbed a horizontal beam ("whaler beam") into the unstable bluff immediately above the seacave fill, and tie it into stable portions of the bluff. On July 6, 1995, Emergency Permit 3-95-44-G was amended a second time to allow for this feature, as well as to provide additional time for the completion of the authorized work. This permit is attached as Exhibit 4.

As constructed, the seawall/retaining wall encroaches approximately 2 feet beyond the toe of the buff, and stretches along approximately 40 feet of the bluff, at a height of 22 feet above mean sea level. It consists of four vertical steel "I-beams "of 20 feet in length installed 8 feet deep within the bedrock underlying the beach, which are cased in concrete and bolted into the bluff face. Epoxy coated rebar and steel beams were used provide reinforcement to concrete which was pored between the vertical piers and then coated with "shotcrete" (sprayed concrete) colored to match the adjacent bluffs. The horizontal concrete whaler beam was imbedded to a depth of 14", and extends for a distance of 28 feet beyond the downcoast terminus of the concrete retaining wall. Drainage blankets and discharge pipes were placed within the seawall to facilitate drainage and relieve pressure that might build up due to heavy rain, wave overtopping, and perched groundwater. (See exhibits 6, 7, and 8).

The subject coastal development permit application has been submitted as a follow up to the Emergency Permit, as required by Section 13142 of the Commission's Administrative Regulations and the conditions of the Emergency Permit. As submitted, the application requests authorization for the permanent installation of the existing structures constructed under Emergency Permit 3-95-44-G (as amended).

# B. <u>Project Location</u>:

The subject project is located on, and seaward of, the Lewis property at 70 Geoffroy Drive, in the Live Oak area of Santa Cruz County, adjacent to Black's Point, a narrow, south facing point about midway between the Santa Cruz Harbor and Soquel Point (see Exhibits 2 and Exhibit 3, attached). This oceanfront property is south facing, and is separated from the beach by a seadiff of approximately 32 feet in height, composed of Purisima Formation sandstone bedrock (to a height of about 24 feet above mean sea level), overlain by about 8 feet of terrace deposits and capped with topsoil. The geotechnical report submitted with the project application indicates that the presence of bedding planes within the bedrock form joint sets which are points of weakness that have controlled the trend of coastline in the project vicinity.

The site is located at the downcoast end of Twin Lakes State beach, which is bounded by Black's Point. This area of the beach is much narrower than the upcoast portions, as the Black's Point promontory begins its seaward trend. The configuration of the bluff fronting the Lewis property forms a corner, facing south at the western end of the property, turning north at about the midpoint of the property, and then facing south again at the eastern limit of the property. Due to a prominent northwest-trending joint within the seacliff fronting the Lewis property, the majority of the constructed seawail/retaining wall is located on the western facing portion of the bluff, the direction in which bluff failure previously occurred. The seacable that has been filled is primarily southerly facing, underlying the southeast corner of the Lewis property (see Exhibit 6).

The base of the seawall and seacave fill were constructed on the intertidal area of Twin Lakes State Beach, managed by the California Department of Parks and Recreation (State Parks). During winter months, as well as during high surf conditions the remainder of the year, the entire beach in front of the Lewis property is typically under water, except only during the lowest of tides. During such times, an old rock armor (riprap) revetment (estimated to be installed in 1965), and two seacaves, one of which extends a great distance landward of the bluff face, are exposed immediately south of the project site. Over the years, the previously installed revetment has been scattered by wave action, flattening it to a 5:1 horizontal to vertical slope in some areas, and creating voids in other areas. This revetment is typically covered by beach sand during the summer months; however, summer storms, such as the one which occurred in June, 1996, can completely expose the riprap structure.

# C. Commission Jurisdiction:

At this location, the Coastal Commission retains coastal development permit jurisdiction over all areas seaward of the mean high tide line, while the County of Santa Cruz, by virtue of having a certified Local Coastal Program, has coastal development permit authority for all upland areas. Upon inspection of the site in early April, 1995, Commission staff determined that the proposed seacave fill was within the Coastal Commission's original jurisdiction, on the basis that the seacave was subject to tidal action, and that the exposed seacave floor was well below the mean high tide line. Similarly, the construction of the seawall/retaining wall was determined to be in the Commission's original jurisdiction, as the base of the wall was located in an intertidal area and founded well beneath the mean high tide line. The gabion basket retaining wall, which supports the upper terrace deposits and is set back approximately four feet from the top of the seawall structure, falls within Santa Cruz County's permit jurisdiction.

3.97

The State Lands Commission has required a permit for the portions of the subject project located on State Lands, and has requested that the Commission take action first. It is anticipated that once the Commission takes action, the State Lands Commission will issue a permit for portions of the development which encroach upon State Lands. (Personal communications with Nancy Smith, State Lands Commission staff).

# D. Coastal Act Conformance:

Shoreline Structures.

# Coastal Act Section 30235 states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

# Section 30253 requires that:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute algorificantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially after natural landforms along bluffs and cliffs.

Analysis: As applicable to the subject project, the above policies limit the construction of shoreline protection devices to those necessary to protect existing structures. Further, they require that the design of such structures eliminate or mitigate adverse impacts on local shoreline sand supply. Finally, the construction of the devices must be structurally stable, and not adversely impact adjacent areas.

With respect to the need for a shoreline structure at the project site, two primary factors support such development. First, the collapse of a portion of the bluff in March, 1995, and the high potential for additional bluff failure, posed a significant threat to public safety. The beach below this portion of the bluff is a popular recreation area, subjecting the public to serious danger. As a result, immediate action was taken through the Emergency Permit process. Second, the seawall and seacave fill is needed to protect existing structures on the Lewis property. An existing deck in close proximity to the bluff edge was immediately threatened by the initial bluff collapse in 1995. Although not a principal structure, failure to take action could have resulted in additional bluff collapse (as advised by the geotechnical consultants), thereby threatening the Lewis residence.

Due to the small size of the parcel (6,197 square feet), and the fact that the residence is currently setback from the bluff edge to the greatest degree, relocation of the residence is not a viable alternative. The other option of attempting to dismantle unstable portions of the bluff proved to be inappropriate, as this could result in additional bluff instability on the Lewis parcel, as well as on adjacent properties.

With respect to the project's impacts on local shoreline sand supply, the geotechnical consultants report that average annual contribution of sand to the beach from coastal bluff recession on the Lewis property is about 2.4 cubic yards per year. If the entire bluff face fronting the Lewis property were armored, this annual volume of beach sand would be lost by preventing future coastal erosion. The consultants claim that this impact has been partially mitigated by the fact that about 93 cubic yards of terrace deposits and 75 cubic yards of bedrock were disposed on the beach during construction, which should provide about 52 cubic yards of sand to the beach (Foxx, Nielsen and Associates, and Haro, Kasunich and Associates, Inc., letter of December 1, 1995, p.2).

The above mitigation does not adequately address the impact of sand loss, which over the long term, will significantly exceed the amount of sand contributed by the bluff material deposited on the beach during construction (e.g., up to 240 cubic yards in a 100 year period). Currently, the County of Santa Cruz does not have an established in-lieu fee beach sand mitigation program as exists in San Diego. However, the requirement that the permittee reengineer the riprap revetment in front of the seawall to a 2:1 horizontal to vertical slope will expose additional sand, previously trapped by the revetment, providing additional sand within the localized area.

Regarding the project's structural integrity, plans for the seawall structure and seacave plug were prepared by qualified geotechnical engineers and consultants, reviewed by the Commission's staff engineer, and have been approved by the Santa Cruz County Building Department. They entail the necessary drainage features, bedrock foundation, and structural elements to ensure short term stability. In response to Commission staff questions regarding the need to leave the previously installed riprap revetment in place, given the protection provided by the new structures, the consultants responded that the riprap absorbs wave energy, thereby minimizing scouring at the base of the seawall and seacave plug, as well as wave reflection/refraction, and provides erosion protection to adjacent properties. Therefore, the riprap is necessary to be maintained as an essential structural element of the project. (Haro Kasunich and Associates, Inc., and Foxx, Nielsen and Associates, letter of December 1, 1995, p. 5-6, and Haro Kasunich and Associates, Inc. letter of January 15, 1997, p. 1-2).

However, the current revetment is in a state of disrepair, with scattered rocks impairing its effectiveness and the structural integrity of the seawall and seacave plug. As noted by the consultants, the riprap needs to be restored to a 3:1 slope, and supplemented in some areas, in order to be effective (Haro Kasunich and Associates, Inc., and Foxx, Nielsen and Associates, letter of December 1, 1995, p. 2-3, and Haro Kasunich and Associates, Inc. letter of January 15, 1997, p. 2). Upon review by the Commission staff engineer, it was determined that using appropriately sized rock, and properly reengineering the structure, would allow for a 2:1 horizontal to vertical slope. This determination was partly based upon the fact that there are many examples throughout Santa Cruz area of engineered revetments which use a 2:1 slope or greater. Properly engineering the revetment will improve the structural stability of the seawall and seacave plug, and mitigate impacts to sand supply (discussed above) and public access and recreation (addressed below). As a result, the Special Conditions attached to this permit



require the submission of supplemental information necessary to achieve and maintain a structurally stable effective riprap revetment with a 2:1 slope.

The Coastal Act policies identified above also prohibit the construction of shoreline protection devices which contribute to the erosion of adjacent areas. The geotechnical consultants assert that the shoreline structures developed at the site will not impact adjoining properties, on the basis that they do not significantly change shoreline or bluff geometry. However, as discussed above, the existing riprap revetment needs to be reengineered and properly maintained in order to prevent the increased degree of wave reflection created by the seacave plug and seawall from adversely impacting adjoining properties.

This reengineering, necessary to preserve the structural integrity of the new seawall and seacave plug, as well as to prevent adverse impacts to adjacent properties, is ensured through the Special Conditions 2 and 3, which require reengineering of the revetment according to site specific engineering requirements, as well as Special Conditions 5, 7b., and 8, which ensure that the structures are effectively installed, monitored, and maintained. Other Special Conditions (1, 6 and 9) ensure that these activities are carried out consistent with the Coastal Act and other applicable regulatory requirements.

In recognition of the fact that the subject project is one component of a larger shoreline feature (i.e., the existing diapidated riprap revetment extends both upcoast and downcoast of the project site), and that the structural integrity of the project is directly related to the functioning of the revetment as a whole, Special Condition 4 encourages the participation of the adjacent property owners in the needed reengineering of this structure. Although not required as part of this permit. Special Condition 4 is specifically intended to promote participation by the three adjacent property owners which benefit from this structure (APN's 028-143-34, 028-143-37, and 028-143-29), through future amendment to this permit. If these adjacent property provide the additional information needed to address this expanded area, (i.e., supplemental geotechnical report and engineering plans, maintenance and monitoring plans, evidence of other agency approvals, and legal documentation), the necessary amendment for the extended reengineering could qualify for expedited processing, potentially as an immaterial amendment. Of course, this would apply only to those activities which take place within the Coastal Commission's original jurisdiction.

Finally, it must be acknowledged that the construction of any shoreline protection structure represents only an effort to reduce the risk of continued coastal erosion. The project is only buying time, and eventually, the ocean will claim the area (Geologic Investigation for 70 Geoffroy Drive, Foxx, Nielsen and Associates, September 1995, p.10). With this understanding, Special Condition 7.a. requires the applicants to file a waiver of liability which Indemnifies the Coastal Commission from any claim of liability.

Conclusion: The hazardous conditions which existed on the site, both to existing development and public safety, would be exacerbated should the development undertaken under Emergency Permit 3-95-44-A-2 be removed. Alternatives to the constructed seawall and seacave fill were adequately analyzed by project engineers and appropriately determined to be infeasible or inferior. Authorizing the permanent installation of the structures developed pursuant to the Emergency Permit is therefore consistent with Coastal Act Section 30235. However, as required by Coastal Act Sections 30235 and 30253, reengineering of the riprap revetment at the base of the structure, as well as proper monitoring and maintenance of all project elements, is

necessary to ensure structural integrity, avoid adverse impacts to adjacent properties, and mitigate impacts to local sand supplies. Therefore Special Conditions have been attached to the permit which ensure that such activities occur consistent with the Coastal Act requirements cited above.

Public Access and Recreation.

## Section 30211 of the Coastal Act states:

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

# Section 30221 provides that:

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

# Coastal Act Section 30240 states, in part:

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

Analysis: The subject project conflicts with the above policies in the following ways:

- the presence of the seawall will diminish local sand supply and halt bluff retreat which would otherwise create additional beach area available for coastal access and recreation (see discussion in part D.1. of these findings);
- the riprap revetment component of the structure consumes an unnecessary amount of oceanfront land that would otherwise be suitable for public recreation (also identified in part D.1. of these findings); and
- the development is adjacent to a State Beach, and the presence of riprap, especially in its
  currently unconsolidated state, diminishes the public recreational opportunities meant to be
  provided in this area, by taking up beach area that could otherwise be used for recreational
  activities.

In order to mitigate these impacts, Special Conditions 2 and 3 have been attached to this permit, which require that the riprap revetment component of the project be reengineered to a 2:1 horizontal to vertical slope. This slope has been determined by the Commission staff engineer to provide the least amount of beach encroachment, while at the same time allowing for structural stability and the necessary erosion protection. In addition, Special Condition 5

3.97.0

requires that the revetment be maintained at such a slope, and with the minimum footprint. (These conditions are also necessary to ensure the structural integrity of the seawall and seacave plug, and to prevent adverse impacts to adjoining properties, as discussed in part D.1 of these findings.)

Finally, Special Condition 4 encourages the participation of the adjacent property owners in the needed reengineering of the adjacent portions of this structure, through an amendment to this permit. Although not required by this permit, this action would further improve public access and recreation conditions in the project vicinity, as well as provide more effective protection of existing development.

Supporting this concept, the regional assessment of the California Coastal Management Plan conducted by the Commission in 1995 (otherwise known as "ReCap" - Regional Cumulative Assessment Project) found that from the northern limit of Santa Cruz County south to Point Lobos (Monterey County), approximately 25 acres of beach has been covered by shoreline protection devices. If existing trends continue, the study estimated that 65 acres of beach could be lost in this area. ReCap concluded that shoreline armoring has significantly affected public access opportunities through encroachment of shoreline protection devices onto beach areas. In order to address this problem, the study suggested that shoreline protection devices be designed to have the least amount of encroachment onto public beach areas as possible.

It is noted that in many instances, the Coastal Commission has required applicants for seawall projects to dedicate the portion of their property in front of the seawall for public access and recreation purposes, as mitigation for the loss of public access and recreation opportunities attributable to the seawall. In this case, however, such an easement is unnecessary, as the right of the public to utilize the portion of beach in front of the development has been established by virtue of the fact that the area seaward of the toe of the bluff is public trust land (as evidenced by the fact that during much of the year, this area is under water). While it is recognized that on the inland side of the project vicinity there is a gate which prevents the public from utilizing a historic trall to the beach on the inland side of Black's Point, It is unknown if the gate is on the subject property. Further, there is no nexus between the subject project and this accessway, which traverses across another property which has nothing to do with this project. For these reasons, it would be inappropriate for the Commission to require that this trail be opened for public use.

Conclusion: The subject project, as currently constructed, is inconsistent with Coastal Act Polices 30211, 30221, and 30240, due to the fact that the project interferes with the public's ability to access and recreate on the public beach and open ocean area within the project vicinity. This is due to the excessive footprint of the riprap revetment, the reduction of local sand supply and beach area caused by the armoring of the bluff, and the hindrance to public recreation activities associated with the adjacent State Beach area caused by the scattered riprap. For these reasons, Special Conditions have been attached to this permit which require the riprap revetment to be reengineered and maintained in a fashion which minimizes its footprint on public beach areas to the greatest degree feasible.

Because there is not an established beach sand supply mitigation program for this area (as exists in San Diego), nor an in-lieu fee program to offset the loss of public beach, the loss of sand supply caused by the project can only be partially mitigated by the applicant, through reengineering and maintaining the riprap. As a result, the already ephemeral beach may

narrow or eventually dissapear. Accordingly, while the range of mitigation measures to offset this impact is limited, those measures which are feasible (including reengineering of the riprap) are required by the conditions of this permit. Therefore, as conditioned, the project can be found consistent with Coastal Act Sections 30240 (b), 30211, and 30221.

## Marine Resources.

# Coastal Act Section 30230 states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

# Section 30231 provides:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

# Section 30232 requires:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Analysis: The Coastal Act standards identified above require that, at a minimum, development activities must protect and maintain marine resources and coastal water quality. This is to be accomplished through proper design, containment of materials, and construction practices which are sensitively designed and carried out. As applied to the subject project, these policies necessitate that the shoreline structure be designed in a manner which minimizes coverage of intertidal areas, and constructed in a manner which avoids cement, crankcase oil, and other foreign materials from entering bay waters.

Filling of the seacave and pouring of the concrete took place during extreme low tide events to avoid contact between marine waters and uncured concrete, and involved proper containment of concrete slurry, consistent with these requirements. As constructed, the existing seawall minimizes encroachment into intertidal area by being located directly adjacent to the toe of the bluff, with a maximum width of approximately two feet, and therefore conforms with the above policies. However, the preexisting riprap revetment which is currently in a state of disrepair (but still provides an essential component to the overall structure), has been scattered by wave

action such that it has unnecessarily disrupted the naturally sandy bottom of the local marine environment and displacing those organisms which are dependent upon a sandy bottom.

In order to address this issue (among others), Special Conditions 2 and 3.a. require that the riprap revetment be reengineered to a 2:1 horizontal to vertical slope, thereby reducing the development's impact to the marine environment by decreasing the revetment's footprint to the greatest degree feasible.

This construction activity, as well as other maintenance activities which may become necessary, also have the potential to adversely in pact the marine environment. For example, existing rocks which are too small to be reused may be improperly disposed of, or concrete being used to repair spalled or cracked areas of the seawall or seacave plug could involve the washdown of tools coated with concrete in marine waters. To ensure that the required revetment reconstruction conforms with the above Coastal Act directives, Special Conditions 3.b. and c. requires Executive Director approval of the time and manner in which construction activities take place. Similarly, Special Condition 5 requires Executive Director approval of a plan which sets for the monitoring and maintenance procedures necessary to avoid future adverse impacts to the marine environment posed by the development.

# Conclusion:

With the exception of the riprap revetment, the subject development has been designed and constructed in a manner consistent with Coastal Act policies protecting marine resources. Special conditions have been attached to this permit to ensure that marine resources are adequately protected from adverse impacts posed by reconstruction of the existing riprap and other future construction activities, and to minimize the disruption of the marine environment caused by the riprap revetment. With these conditions, the project is found to be consistent with Coastal Act Policies 30230, 30231, and 30232.

# V. CEQA

Section 13906 of the California Code of Regulations governing the Coastal Commission requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21090.5d(2)i of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which could substantially lessen any significant adverse impact which the activity may have on the environment.

As discussed in these findings, the project has been mitigated, through the application of Special Conditions, to avoid significant geologic and public access and recreation impacts. As conditioned, the proposed development will not have any significant adverse impacts on the environment within the meaning of CEQA.

# **EXHIBITS**

- 1. Standard Conditions
- 2. Location Map
- 3. Project Location

20	Richard and Wendy Le	W
4.	Emergency Permit 3-95-44-G-A2	
5.	Geologic Cross-Section	
6.	Site Plan	
7.	Seawali Structural Plan	
8.	Whaler Beam Structural Plan	

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# CALIFORNIA COASTAL COMMISSION

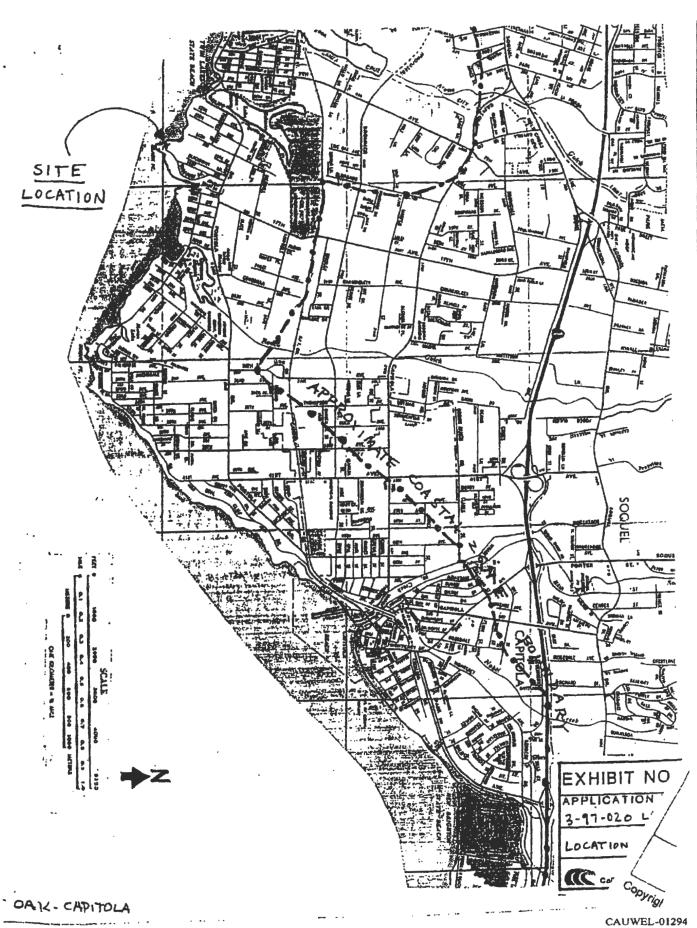
# STANDARD CONDITIONS:

- Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. <u>Compliance</u>. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
- 4. <u>Interpretation</u>. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 5. <u>Inspections</u>. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
- 6. <u>Assignment</u>. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

EXHIBIT NO. 1

APPLICATION NO. 3-97-020 LEWIS

STANDARD CONDITIONS



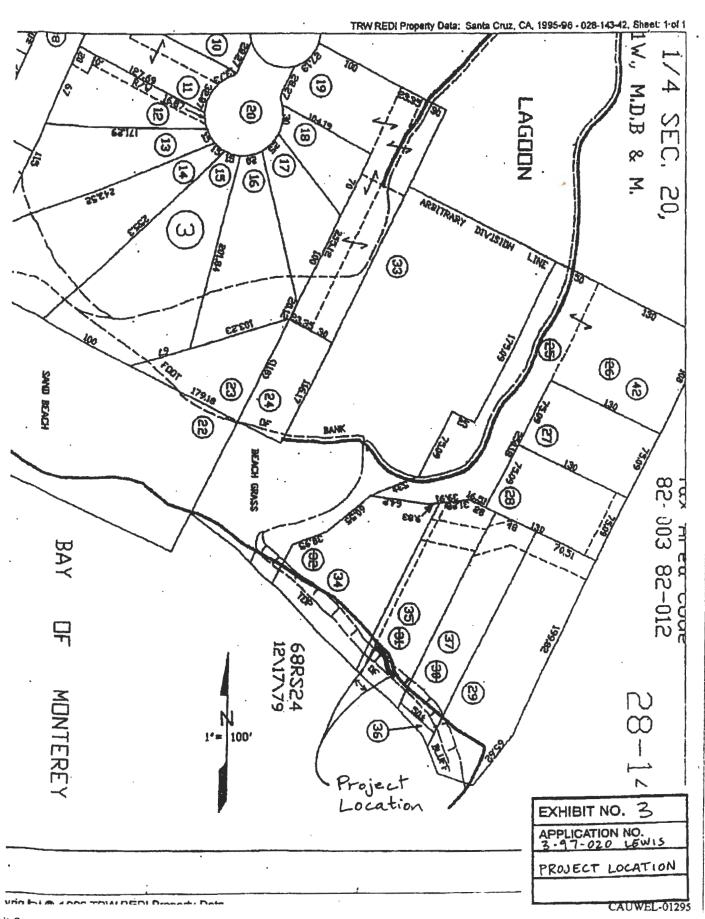


Exhibit 3 A-3-SCO-23-0003 Page 169 of 311 306

COUNTY OF SANTA CRUZ

Date: 8/2/96

ZONING ADMINISTRATOR

Agenda Item:

After 10:00 Time:

A.M.

STAFF REPORT TO THE ZONING ADMINISTRATOR

APPLICATION NO.: 95-0198

Assessor's Parcel Number:

028-143-35

APPLICANT: Richard & Wendy Lewis (husband & wife)

OWNER: Richard & Wendy Lewis (husband & wife)

70 Geoffrey Lane, Santa Cruz, CA 95062 PROJECT LOCATION:

FINAL ACTION DATE: 4/23/96

PROJECT INFORMATION

.. Project Description:

Installation of gabion baskets at top of bluff for

erosion control

Project Access: Permits Required: Along Coastal Bluff adjacent to Geoffrey Lane Coastal Zone Permit, Grading permit are needed to

conduct stabilization

Env. Determination:

Categorically exempt from CEQA per Section 1801 of

the CEQA Guidelines

Coastal Zone: XX yes \_\_\_\_\_ no APPEALABLE TO CC: XX yes \_\_\_\_\_no

PARCEL INFORMATION

028-143-35 Current APN: 12371 sq. ft.

Parcel Size: Existing Land Use: Parcel:

R-1-6

Surrounding:

R-1-6, State Park/Beach

Planning Area: Live Oak

Land Use Determination: Urban Low Residential

Zoning District: R-1-6

Supervisorial Dist: 2nd

Rio De lar Homeowner Assoc. Inc. Applicant:

Application No.: 95-0/48 APN: 043-171-(1-13)

# ENVIRONMENTAL INFORMATION

### Item Comments

Geo. Hazards

Coastal bluff topple threatens а. beach and property. Wall construction and grading work stabilized topple.

b. Fire Hazard

No increased fire hazard. Ь.

c. **Slopes**  c. Slopes well over 30%.

d. Scenic

Beach & bluff environment subject d. to natural degradation.

Drainage

Grading and wall construction required to stabilize bluff. No tree removal required. Adverse visual impact lessened by coloration of wall and use of native rock products. Drainage re-established into closed conduits to areas approved by Coastal Commission and State Parks.

# SERVICES INFORMATION

W/in Urban Services Line: XX yes \_\_\_ no

Water Supply: Public purveyor

Sewage Disposal:

Public purveyor

Fire District:

Central Fire Protection

Drainage District: Zone 5 Drainage District

# INTRODUCTION

The Lewis project's Coastal Permits is the regular permitting of the permanent rock gabion erosion control structures on the Lewis property at 70 Geoffrey Road in the Live Oak area of the County of Santa Cruz. The gabions consist of flat (18" deep) 5'+ wide erosion control rock filled baskets that will be permanently maintained a long a 15' section of the bluff.

An emergency permit was issued for this work on May 5, 1995. This gabion structure is only a small part of a much larger emergency repair which included a retaining structure, the plugging of a sea cave, and related grading. After coordination of emergency authorizations between the County

Applicant: Rio De far Homeowner Assoc. Inc.

Application No.: 95-0/48

APN: 043-171-(1-13)

and the Coastal Commission, the Coastal Commission assumed permitting responsibility for all but the gabions. The reason the Coastal Commission assumed responsibility for the coastal structure and sea cave plugs was that these projects extended below mean high tide and were in their jurisdiction. Consequently, the retaining structure received only a County Building permit and the sea cave plug and other bluff face reinforcement received only County technical review.

# PHYSICAL SETTING

The Lewis property is located between Geoffrey Road and the coastal bluff. At this location the coastal bluff is composed of jointed Purisma sand stone expose d on the lower section of the bluff, and a Marine "Terrace" Deposit composed of both terrestrial and marine sands, slits and cobbles on the upper bluff. Bluff formation processes are related to topples caused by wave action and are relatively steep due to the well inurated Purisma sandstone.

In January and March 1995 the Lewis property was subject to a series f winter storms that depleted the beach below the bluff. The bluff depletion dropped the beach elevation by several feet increasing the effectiveness of the wave action and reducing the sand's support of the bluff. These processes coalesced producing a period of rapid bluff failure due to topples. The depletion also exposed a cave that extends 40' into the base of the coastal bluff. January 1995's failure started as a topple on the northwest side of the Lewis' property that extended towards a sea cave on the eastern side of the Lewis property. Joints opened up behind and east of the first topple and the widening of these cracks was visible within the sea cave.

After the initial topple, the Lewis' consulted with their engineer and engineering geologist, and ultimately with Joe Hanna and Joel Schwartz of the County's Planning Department. On examining the on-going active topple of the slope, the consultants and the County were concerned that the toppling would continue at least until the summer wave patterns deposited more sand on the beach. Of particular concern was the potential for the collapse of the sea cave. This collapse would bring the active bluff closer to the Lewis' home, and even closer to the Lewis' Neighbor's home.

# COASTAL COMMISSION INVOLVEMENT

The County and the Coastal Commission worked together to permit the project with both agencies issuing emergency permits to correct the topple and strengthen the sea cave. Ultimately, the Coastal Commission took jurisdiction over a majority of the permit issues although both agencies participated in technical review and inspection of the repair. Coastal Commission jurisdiction extended to all work below or founded below mean high tide.

However, the County retained jurisdiction over the gabion erosion control on the bluff since this structure was above mean high tide. And, in coordination with the Coastal Commission, an emergency permit was issued to place these gabion s in County jurisdiction. No environmental review is

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required of the gabion structures since they were placed as part of an emergency condition.

# RECOMMENDATION

The gabion structures are a necessary facet of the bluff stabilization on the Lewis property. This stabilization is appropriate and is consistent with both the Local Coastal Plan and the General Plan as indicated in findings Exhibit A. To comply with the Coastal Plan several conditions are attached to this permit to assure monitoring and maintenance.

# EXHIBITS

- A. Findings
  - 1. Coastal Zone Permit Findings
  - 2. Development Permit Findings
- B. Conditions
- C. Location Map
- D. Assessor's Map
- E. Zoning Map
- F. Project Plans

SUPPLEMENTARY REPORTS AND INFORMATION REFERRED TO IN THIS REPORT ARE ON FILE AND AVAILABLE FOR VIEWING AT THE SANTA CRUZ COUNTY PLANNING DEPARTMENT, AND ARE HEREBY MADE A PART OF THE ADMINISTRATIVE RECORD FOR THE PROPOSED PROJECT.

Report Prepared By: Joe Hanna, CEG

Phone Number: (408) 454-3175 Santa Cruz County Planning Dept.

701 Ocean St., 4th Floor

Rio De dar Homeowner Assoc. Inc. Applicant:

Application No.: 95-0/48 APN: 043-171-(1-13)

## COASTAL ZONE PERMIT FINDINGS

1. THAT THE PROJECT IS A USE ALLOWED IN ONE OF THE BASIC ZONE DISTRICTS, OTHER THAN THE SPECIAL USE (SU) DISTRICT, LISTED IN SECTION 13.10.170(D) AS CONSISTENT WITH THE LUP DESIGNATION.

The proposed gabion erosion control structures are allowed in the R-1-6 zone district and consistent with the Rural Residential General Plan Land Use Classification.

2. THAT THE PROJECT DOES NOT CONFLICT WITH ANY EXISTING EASEMENT OR DE-VELOPMENT RESTRICTIONS SUCH AS PUBLIC ACCESS, UTILITY, OR OPEN SPACE EASEMENTS.

Public access exists to the beach to the West of the project site. No public access exists along or through this parcel. No utility easements exist across the lot.

THAT THE PROJECT IS CONSISTENT WITH THE DESIGN CRITERIA AND SPECIAL 3. USE STANDARDS AND CONDITIONS OF THIS CHAPTER PURSUANT TO SECTION 13.20.130 ET SEQ.

Section 13.20.130 of the County Code establishes the design criteria for coastal zone developments. This section requires that new development be sited, designed and landscaped to be visually compatible and integrated with the character of the surrounding neighborhood. The proposed work is erosion protection to help secure the bluff. This includes protecting the existing vegetation which will remain undisturbed to the extent possible. Further the gibbon contains rock and will be planted. Therefore, the project as proposed will minimize site disturbance and will be visually compatible with the surrounding

THAT THE PROJECT CONFORMS WITH THE PUBLIC ACCESS, RECREATION, AND VISITOR-SERVING POLICIES, STANDARDS AND MAPS OF THE LOCAL COASTAL PROGRAM LAND USE PLAN, SPECIFICALLY SECTION 4, 5, 7.2 AND 7.3, AND, AS TO ANY DEVELOPMENT BETWEEN AND NEAREST PUBLIC ROAD AND THE SEA OR THE SHORELINE OF ANY BODY OF WATER LOCATED WITHIN THE COASTAL ZONE, SUCH DEVELOPMENT IS IN CONFORMITY WITH THE PUBLIC ACCESS AND PUBLIC RECREA-TION POLICIES OF CHAPTER 3 OF THE COASTAL ACT COMMENCING WITH SECTION 30200.

The project is not a priority site within the coastal zone. It is not designated for recreational or visitor serving purposes. The residential lot is not appropriate for public shoreline access due to the bluff between this parcel and the beach. Pedestrian access to the beach already exists nearby.

Exhibit 3

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Applicant: Rio De lar Homeowner Assoc. Inc.

Application No.: 95-0/48

APN: 043-171-(1-13)

5. THAT THE PROPOSED DEVELOPMENT IS IN CONFORMITY WITH THE CERTIFIED LOCAL COASTAL PROGRAM.

The project site is within the scenic corridor of the coastal zone. The scenic resource preservation policies of the Local Coastal Program require that development minimize visual intrusion from the beach and from scenic highways. Gabion baskets were filled with native rock, and are planted. After completion of the landscaping the gabion will eventually return to the pre-storm damage appearance.

Applicant: Rio De dar Homeowner Assoc. Inc. Application No.: 95-0/48

APN: 043-171-(1-13)

#### DEVELOPMENT PERMIT FINDINGS:

#### Required Findings:

THAT THE PROPOSED LOCATION OF THE PROJECT AND THE CONDITIONS UNDER WHICH IT WOULD BE OPERATED OR MAINTAINED WILL NOT BE DETRINENTAL TO THE HEALTH, SAFETY, OR WELFARE OF PERSONS RESIDING OR WORKING IN THE NEIGHBORHOOD OR THE GENERAL PUBLIC, OR BE MATERIALLY INJURIOUS TO PROPERTIES OR IMPROVEMENTS IN THE VICINITY.

The proposal to place gabions will not effect public health and safety in the area. The work will not impact any property or improvements in the area.

THAT THE PROPOSED LOCATION OF THE PROJECT AND THE CONDITIONS UNDER 2. WHICH IT WOULD BE OPERATED OR MAINTAINED WILL BE CONSISTENT WITH ALL PERTINENT COUNTY ORDINANCES AND THE PURPOSE OF THE ZONE DISTRICT IN WHICH THE SITE IS LOCATED.

The proposal to stabilize the slope meets the objectives for development within the Rural districts.

THAT THE PROPOSED USE IS CONSISTENT WITH ALL ELEMENTS OF THE COUNTY 3. GENERAL PLAN AND WITH ANY SPECIFIC PLAN WHICH HAS BEEN ADOPTED FOR THE AREA.

The accomplished gabions complies with all provisions of the General Plan and are consistent with the zoning.

THAT THE PROPOSED USE WILL NOT OVERLOAD UTILITIES AND WILL NOT GENER-ATE MORE THAN THE ACCEPTABLE LEVEL OF TRAFFIC ON THE STREETS IN THE VICINITY.

The project will not increase the use of utilities or level of traffic.

THAT THE PROPOSED PROJECT WILL COMPLEMENT AND HARMONIZE WITH THE EX-ISTING AND PROPOSED LAND USES IN THE VICINITY AND WILL BE COMPATIBLE WITH THE PHYSICAL DESIGN ASPECTS, LAND USE INTENSITIES, AND DWELLING UNIT DENSITIES OF THE NEIGHBORHOOD.

The gabions are only a minor alteration pre-existing physical conditions and consequently will not have an adverse impact on land use intensities and dwelling unit densities of the neighborhood.

Applicant: Rio De dar Homeowner Assoc. Inc.

Application No.: 95-0/48

APN: 043-171-(1-13)

#### CONDITIONS OF APPROVAL

Coastal Zone and Residential Development

Permit

Application No.: 95-0198

APN: 043-143-35

PLANNING AREA: Live Oak

LOCATION: 70 Geoffrey Lane, Santa Cruz, CA 95062

## **EXHIBITS**

Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/ owner shall:

II. Prior to final inspection, the following shall be complied with.
A. All grading shall be completed.

- Erosion control shall be completed.
- Building permit must be finaled.

III. Operational Conditions.

- Erosion Control plantings, drainage, improvements, and erosion · control shall be permanently maintained.
- Special Permit Conditions.

A state-registered civil engineer shall direct, observe and approve all pertinent aspects of the gabion construction. The property owner shall control erosion at site. Sediment may not leave the project and enter the adjacent water course.

The gabions must be maintained and must be monitored in the same С. manner as the retaining walls.

MINOR VARIATIONS TO THIS APPROVED MINOR LAND DIVISION OR DEVELOPMENT PERMIT WHICH DO NOT AFFECT THE OVERALL CONCEPT OR DENSITY MAY BE APPROVED BY THE PLANNING DIRECTOR AT THE REQUEST OF THE APPLICANT OR THE PLANNING DEPART-MENT STAFF.

**ELECTRONICALLY FILED** Superior Court of California County of Santa Cruz 2/27/2019 1:34 PM Alex Calvo, Clerk IRA JAMES HARRIS, SB #99760 1 Deelan Salsedo, Deputy LAW OFFICES OF IRA JAMES HARRIS One Camino Sobrante, Suite 208 P.O. Box 1478 Orinda, CA 94563 3 Telephone: (925) 258-5100 4 Facsimile: (925) 281-4977 5 Attorney for Plaintiffs 6 7 SUPERIOR COURT OF CALIFORNIA 8 COUNTY OF SANTA CRUZ 9 10 No.: 19CV00673 11 FOWLER PACKING COMPANY, a California Corporation, WILLIAM P. AND LÍNDA L. SULLIVAN, TRUSTEES OF THE SULLIVAN VERIFIED COMPLAINT FOR QUIET 12 TITLE, AND PETITION FOR WRIT OF FAMILY REVOCABLE LIVING TRUST DATED MANDAMUS PURSUANT TO C.C.P. 13 MAY 2, 1996; MARK A. AND SUZANNE J. **SECTION 1085** CAUWELS, TRUSTEES OF THE MARK AND 14 SUZANNE CAUWELS FAMILY TRUST INITIALLY CREATED ON JULY 30, 1992; 15 NORMAN L. CHAPMAN AND CAROL S. CHAPMAN, TRUSTEES OF THE 2000 NORMAN L. CHAPMAN & CAROL S. 16 Complaint Filed: CHAPMAN REVOCABLE TRUST UNDER INSTRUMENT DATED JUNE 6, 2000; DAWNA 17 SUTTON, TRUSTEE OF THE SUTTON FAMILY REVOCABLE TRUST DATED OCTOBER 6, 18 1997 19 Plaintiffs, 20 21 VS. COUNTY OF SANTA CRUZ, a Public Entity; 22 CALIFORNIA COASTAL COMMISSION, a
Public Agency; ALL PERSONS UNKNOWN
CLAIMING ANY LEGAL OR EQUITABLE
RIGHT, TITLE, ESTATE, LIEN OR INTEREST
IN THE PROPERTY DESCRIBED IN THE
COMPLAINT ADVERSE TO PLAINTIFFS'
TITLE OR ANY CLOUD ON PLAINTIFFS' 23 24 25 TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO; and DOES 1 to 100, inclusive, 26 Defendants. 27 28

 Plaintiffs allege as follows:

- 1. The FOWLER PACKING COMPANY is a California Corporation duly organized and existing under the laws of the State of California. The other named Plaintiffs identified below are all residents of the State of California. Each of the named Plaintiffs own and regularly occupy residential properties with rights of ingress and egress over an easement that serves as a driveway servicing each of their private residences either as owners of a portion of the land or as holders of a recorded easement interest over said land located at the end of (but not a part of) Geoffroy Drive in Santa Cruz, California. The below referenced private driveway easement and associated improvements are maintained by the Geoffroy Homeowners Association pursuant to a set of Covenants Conditions and Restrictions and a Road and Security Gate Agreement recorded on October 11, 2016 as Document No. 2016-0039232. As a result, jurisdiction is proper in the Superior Court of the County of Santa Cruz under California Code of Civil Procedure Sections 760.040 and 1085.
- 2. The private easement and/or right of way (hereinafter as "the EASEMENT") that benefits each of the five properties is legally described as follows:

Twenty Five (25) feet in width, measured at right angles, twelve and one-half (12.5) Feet on each side of the following described centerline:

Beginning at the 3/8 inch iron pipe on the western boundary of the map entitled "Tract Number 57, Santa Maria Cliffs," being a part of Section 20, Township 11 South, Range 2 West, Mount Diablo Meridian, Santa Cruz County, California," filed for record in the office of the County Recorder of Santa Cruz County on March 11, 1947 in Map Book 28 at Page 48, Santa Cruz County Records, from which the most northern corner of Lot 22 as shown on said Map bears South 25° 10' West 12.50 Feet distant;

Thence from said Point of Beginning North 64° 50' West 98.18 Feet;

Thence South 81° 52' West 25 Feet to a Point on the Southeastern Boundary of the land conveyed by Joe L. Mello et.ux. to Vincent J. Coates et.ux. recorded May 4, 1972 in Volume 2197 Page 259, official records of Santa Cruz County;

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Thence North 80° 12' West 58.02 Feet to the Northwester Boundary of said land of Coates.

- 3. Plaintiff FOWLER PACKING COMPANY is the record owner of 60 Geoffroy Drive, Santa Cruz, California 95062 APN 028-143-34. While 60 Geoffroy Drive is burdened with a dedicated easement for public access (See, Book 4228, Pages 395 to 540 recorded September 28, 1987 related to Application 3-81-55-A) to a sandy beach shoreline area between the base of the bluff and the high tide line, this area does not affect the above-described EASEMENT. Plaintiffs WILLIAM P. SULLIVAN and LINDA L. SULLIVAN are the Trustees of The Sullivan Family Revocable Living Trust Dated May 2, 1996 which is the record owner of 63 Geoffroy Drive, Santa Cruz, California 95062 APN 028-143-44. 63 Geoffroy is also burdened with a private pedestrian easement for egress and ingress to the beach granted to the adjoining neighbors Ofir and Eva Kedar by way of Document 2003-0074435 dated July 28, 2003 which is likewise not involved or impacted by the EASEMENT described above in paragraph 2. Plaintiffs MARK A. CAUWELS and SUZANNE J. CAUWELS are the Trustees of The Mark And Suzanne Cauwels Family Trust Initially Created On July 30, 1992 which is the record owner of 70 Geoffroy Drive, Santa Cruz, California 95062 APN 028-143-35. NORMAN L. CHAPMAN and CAROL S. CHAPMAN are the Trustees Of The 2000 Norman L. Chapman & Carol S. Chapman Revocable Trust Under Instrument Dated June 6, 2000, which is the record owner of 80 Geoffroy Drive, Santa Cruz, California 95062 APN 028-143-37. DAWNA SUTTON is the Trustee of The Sutton Family Revocable Trust Dated October 6, 1997 which is the record owner of 90 Geoffroy Drive, Santa Cruz, California 95062 APN 028-143-29. The only other matters of title impacting the five properties are easements and rights of way to Coast Counties Gas and Electric and East Cliff Sanitation District down the easement described above or to other property owners which are unaffected by the EASEMENT described in paragraph 2 above. At all times relevant herein, each of the Five (5) Plaintiffs have been in possession as owners of their respective properties over a period of time well in excess of the last five (5) years, with many of them having owned and occupied their residences over a number of decades.
- All Plaintiffs, as well as all their predecessors, have regularly paid any and all taxes on 4. the above-described properties inclusive of the easement identified above from and since the residences

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27 28 were originally constructed in the 1940's and 1950's (including but not limited to over the five year period required to adversely re-possess the acreage if said area was ever prescriptively acquired by anyone previously, which Plaintiffs categorically deny).

- Defendant COUNTY OF SANTA CRUZ (hereinafter as "the COUNTY") is a municipal 5. corporation organized and existing under the laws of the State of California. At all times relevant herein, the COUNTY functioned under a set of Coastal Zone Regulations, including a Local Coastal Plan, that the California Coastal Commission certified, thereby granting jurisdiction over Coastal Development within the Coastal Zone to the Santa Cruz Planning Department, including but not limited to the determination of whether a development was categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures, as authorized by California Public Resources Code Section 30519 (a); 14 CCR Section 13569 and Hagopian v. State of California (2014) 223 Cal.App.4th 349, 362-363. These Coastal Act provisions were mirrored in the Santa Cruz County Code (hereinaster as "SCCC") through Chapter 13.20.
- Defendant CALIFORNIA COASTAL COMMISSION (hereinafter as "the 6. COMMISSION") is a State administrative body authorized in certain circumstances to enforce the California Coastal Act of 1976 (Public Resources Code § 30000 et.seq.) consistent with the constitutional rights of private property owners (Public Resources Code § 30001.5(c)). The COMMISSION retains jurisdiction over specified matters, including appellate jurisdiction over certified Local Coastal Plan approvals or denials of Coastal Development Permits, or exemption and/or exclusion determinations under the above-referenced statutes. The appeals of such determinations, however, must be by the applicant, an aggrieved person or two Commissioners within a specified time pursuant to California Public Resources Code Sections 30333 and 30620 and 14 CCR Section 13569. Once again, these time procedures are mirrored by SCCC Section 13.20.080.
- The Defendants named herein as "ALL PERSONS UNKNOWN, CLAIMING ANY 7. LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THIS COMPLAINING ADVERSE TO PLAINTIFFS' TITLE, OR ANY CLOUD ON PLAINTIFF'S TITLE THERETO" (hereinafter as "MEMBERS OF THE PUBLIC") are unknown to Plaintiffs. Plaintiffs are informed and believe that these unknown defendants, and each of them, are

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members of the public who claim some right, title, estate, lien, or interest in the above described property which is adverse to Plaintiffs' rights and interests, or that is or may constitute a cloud against said rights and interests.

8. The true names and capacities of cross-defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs at this time, and are therefore sued pursuant to the provisions of California Code of Civil Procedure Section 474. Plaintiffs will amend this complaint to allege the true names and capacities of said fictitious defendants, when the same are ascertained. Plaintiffs are informed and believe and thereon allege that each of the fictiously named defendants claim some right, title, estate, lien, or interest in the above-described property that is adverse to Plaintiffs' rights and interests, or that is or may constitute a cloud against said rights and interests.

## FIRST CAUSE OF ACTION

## (QUIET TITLE: MEMBERS OF THE PUBLIC, DOES 1-100 AND COMMISSION)

- 9. Plaintiffs hereby incorporate by reference each and every allegation of paragraphs 1-8, inclusive, as though fully set forth herein.
- 10. Plaintiffs bring this action to quiet title to their rights, title and interests in the above referenced properties and EASEMENT as against the MEMBERS OF THE PUBLIC, DOES 1-100, and the COMMISSION to the extent any of them claim any right, title, estate, lien, or interest in the above-described property, inclusive of any claimed right to park their vehicles on the above-described EASEMENT and/or right of way, or to use/access (by traversing the EASEMENT to view or access)

  Twin Lakes Beach through the dangerously steep inland northeastern bluff that is a part of (but slopes away from) APN 028-143-34, APN 028-143-35 and APN 028-143-37 down and across the northwestern portion of APN 028-143-44 that is adjacent to Twin Lakes State Beach, without interference.
- 11. The private EASEMENT/driveway described above has existed since at least 1954, and has been used exclusively by the owners of the five residences listed above, or by permission or invitation from Plaintiffs or their predecessors to certain specified invitees, friends and/or members of the neighborhood. To access the dangerously steep and unstable north-eastern bluff slope one must cross over the private property of all five Plaintiffs' as well as their interests in the above-described EASEMENT, which Plaintiffs and/or their predecessors have owned and paid taxes on for decades.

- 12. Plaintiffs are informed and believe that many years prior to the enactment of the California Coastal Act of 1976, one or all of the owners of the five properties then owned by Plaintiffs' and/or Plaintiffs' predecessors properly applied for and secured approval (if any approval was required at that time) to construct and/or install fencing along the bluff top on APN 028-143-34, 028-143-35 as well as 028-143-37 and between 028-143-44.
- trespassers jumping the fence and/or squeezing through the gate, aerial photographs and historical records undeniably reflect the fact that the partially wood and partially chain link wire fence, along with a locked gate and prickly vegetation, have been in existence barring public access from and since the late 1960's. The prior trespassers, when seen, were regularly confronted and told that they were trespassing on private property. None of them openly disputed Plaintiffs or Plaintiff's predecessors' ownership; nor did Plaintiffs find any of them continuing to trespass over any uninterrupted duration in excess of five years. In early 2001 all access down the dangerously steep and unstable slope was blocked by barbed wire on top of the fencing and extensive additional vegetation. Said fencing and vegetation has remained in place to this day. No one has traversed the bluff slope for ingress or egress to or from Twin Lakes State Beach across the above-described properties or EASEMENT since 2001.
- 14. Plaintiffs request a determination that the alleged historic record of use before, or on and after passage of the California Coastal Act, if any, was occasional, secretive and not open or hostile, and certainly not uninterrupted or continual for a period in excess of five (5) years as required, and has therefore been insufficient to establish any public or private prescriptive rights to access (for viewing or ingress or egress) to and from Twin Lakes State Beach down the EASEMENT or the north-eastern bluff slope between APN 028-143-34, 028-143-35 and 028-143-37, on the one hand, and the rear north-western portion of APN 028-143-44, on the other. As a result Plaintiffs request that their right, title and interests be quieted in their favor as no enforceable prescriptive rights have ever been established.

WHEREFORE, Plaintiffs pray for Judgment as hereinafter set forth.

## SECOND CAUSE OF ACTION

# (QUIET TITLE: ABANDONMENT OF PRESCRIPTIVE RIGHTS OF ACCESS) (MEMBERS OF THE PUBLIC AND DOES 1-100)

- 15. Plaintiffs hereby incorporate by reference each and every allegation of paragraphs 1-14, inclusive, as though fully set forth herein.
- establish the existence of any prescriptive right (by proof of open, notorious, adverse use of the EASEMENT and bluff slope area described above, for an uninterrupted and continuous period of time in excess of 5 years) as ingress or egress to or from Twin Lakes State Beach, Plaintiffs further allege that the dangerously steep and unstable bluff slope has been totally blocked since at least since 2001, if not earlier, with fencing, barbed wire and heavy prickly vegetation, and that during that period (as well as at all times beforehand) they have paid any and all taxes on the property inclusive of the EASEMENT and bluff slopes.
- by MEMBERS OF THE PUBLIC and DOES 1-100 has been blocked since at least 2001, if not earlier, there has been no access to or use of the area whatsoever, and as a result, to the extent Defendants are able to establish the existence of any prescriptive rights having accrued prior to 2001 (which are categorically denied), Plaintiffs ask the Court to find that Plaintiffs' actual, open, notorious and hostile acts in blocking said usage, under claim of right from and since 2001, and Plaintiffs' exclusive payment of taxes on said acreage, constitute an Abandonment under California Code of Civil Procedure Sections 887.010 to 887.090 and Strong v. Baldwin (1908) 154 Cal.150, 161.

WHEREFORE, Plaintiffs pray for Judgment as hereinafter set forth.

## THIRD CAUSE OF ACTION

## (ORDINARY MANDAMUS: COUNTY & COMMISSION)

- 18. Plaintiffs hereby incorporate by reference each and every allegation of paragraphs 1-17, inclusive, as though fully set forth herein.
- 19. On October 20, 2015 Plaintiffs submitted an application for a development permit (Application 151297) and an Over-Height Fence/Gate Certification with supporting plans and

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specifications by Clarke L. Shultes dated October 1, 2015 along with a Surveyor's Map dated August 2015 by Michael F. Beautz. A true and correct copy of the Plans and Specifications and Surveyor's Map are attached hereto as **EXHIBIT A**. These materials very clearly identify the location, size and materials intended for the proposed gate and fence improvements across the private EASEMENT driveway serving their five properties. The COUNTY properly processed the application, inclusive of reviewing said plans and specifications, checking their files and records regarding the properties history and location, securing input from other agencies and conducting a site visit. The COUNTY requested additional information regarding the amount of parking space to be used on the EASEMENT on December 3, 2015, and upon receipt of the requested information, the COUNTY determined that the development was exempt within SCCC Section 13.20.061 as the improvement was clearly to each of the existing single family residences (including fixtures and other structures directly attached to the residence or structures on the property normally associated with a single family residence such as garages...fences...and landscaping) which determination required specific findings (under Santa Cruz County Code and the certified Local Coastal Plan) that said improvement would not adversely impact public access, public views or the scenic character of the area. This determination was well within their authority. California Government Code Section 20001.5 (c) and City of Malibu v. California Coastal Commission (2012) 206 Cal.App.4<sup>th</sup> 549, 553. As a result, the COUNTY issued the development permit on January 22, 2016. In reliance on this approval, Plaintiffs thereafter applied for a building permit, Permit B-161575, on February 24, 2016. With issuance of the building permit, the improvements were constructed and/or installed, at great expense to Plaintiffs, then inspected by the COUNTY, before the project was finally signed off.

Plaintiffs submitted a coastal development permit application and properly relied on the 20. Santa Cruz County Planning Department's certified Local Coastal Plan and permit process. The Santa Cruz County Code required the Planning Director to make a determination regarding the project's status at the time of submittal or as soon thereafter as possible, and certainly before the permit was considered complete. See, SCCC Sections 13.10.525, 13.20.080 and 18.10.230. Plaintiffs followed any and all required policies and procedures. The COUNTY determined that the proposed improvement was exempt within SCCC 13.20.061. The exemption decision was inserted into the County computer system

 as required by SCCC Section 13.20.080. The property was also posted with Notice of the Application at all times, yet no one challenged the project or the COUNTY's exemption determination. The COUNTY exemption determination was never appealed by any interested/aggrieved person or by any Commissioner. Plaintiffs properly pursued and exhausted any and all administrative procedures required of it by the COUNTY under its certified Local Coastal Plan.

- 21. While challenges the COUNTY's exemption determination could have been raised by any aggrieved person or the Executive Director of the COMMISSION, such action must be taken timely, and at least before the application was deemed complete pursuant to SCCC Section 13.20.080. Nothing in the Coastal Act or the Santa Cruz County Code required any Final Local Action Notice (hereinafter as "FLAN") with regard to the COUNTY'S exemption determinations. Instead, under both 14 CCR Section 13569 and SCCC 13.20.080, it is within the COUNTY's discretion to invite input from the Executive Director of the COMMISSION. At no time during the processing of Plaintiff's permit did anyone challenge the determination or appeal the decision; nor did the COUNTY ever invite the COMMISSION to comment.
- 22. Despite the above, almost two years after the coastal development permit application (151297), some unknown person complained to the COUNTY and/or COMMISSION about the gate and/or the alleged "historic" access down the bluff slope to and from Twin Lakes State Beach in or about November 2017. The COMMISSION could not locate a FLAN for the gate project and requested information regarding the permitted status of the project from the COUNTY. The COUNTY responded on or about January 22, 2018 with copies of the plans and specifications as well as the permit showing that it had deemed the development exempt under SCCC Section 13.20.061.
- On or about April 11, 2018 the COMMISSION sent the COUNTY a letter stating that in its opinion the development was not exempt within SCCC Section 13.20.061 because there was a "historic" record of public prescriptive access through the area (as reflected according to said letter by the purported "open" investigation file V-3-81-055 from 1987) and demanded that the COUNTY retract the permit. The letter implied that the COMMMISSION retained jurisdiction over the development as the time period for appeal had yet to start absent receipt of a FLAN pursuant to California Public Resources Code Sections 30,333, 30603 and 30620.6 as well as 14 CCR Section 13110. It

Exhibit 3

disingenuously "offered" to assist the COUNTY in the enforcement of said alleged Coastal Act violations. As the letter was copied to Plaintiffs, they responded through counsel on April 17, 2018 offering to assist the COUNTY in a defense of said claim. The COUNTY failed to respond.

- 24. On or about May 4, 2018 the COMMISSION having received a copy of Plaintiffs' counsel's April 17, 2018 correspondence, issued two violation notices, V-3-18-0018 and V-3-81-055 (the latter being a purported open investigation started sometime in 1987 and reopened in 2001), demanding that that the gate and fencing be removed or an application for a Coastal Development Permit be resubmitted presumably for both improvements (the fence that had existed along the bluff-top for virtually 50 years as well as the fencing and gate installed at the private driveway entrance pursuant to the January 22, 2016 permit). The COMMISSION specifically noted that any approval of a coastal development permit in this situation would be conditioned upon a grant of public access, and threatened civil penalties should the parties not act accordingly. Plaintiffs received the May 4, 2018 letter on May 10, 2018 and responded on May 16, 2018 pointing out that they had followed any and all permit procedures, had secured a permit and acted in reliance thereon. Nonetheless to avoid the threatened civil penalties, Plaintiffs eventually (on May 31, 2018) offered to meet and confer with the COMMISSION.
- 25. On June 1, 2018 the COMMISSION responded saying that the development was not exempt and that Plaintiffs must apply for a Coastal Development Permit, the approval of which would be "conditioned" upon a grant of public access through the private EASEMENT, as well as the fenced bluff-top and slope to and from Twin Lakes State Beach. On June 13, 2018 Plaintiffs responded noting that absent a judicial determination of prescriptive rights thereto, the imposition of such a condition was outside the COMMISSION's authority under LT-WR, LLC v. California Coastal Commission (2007) 152 Cal.App.4<sup>th</sup> 770. Plaintiffs nonetheless ultimately agreed to temporarily remove the entrance gate to the private driveway, to avoid the threatened civil penalties until these issues could be resolved.
- 26. In the interim, Plaintiffs are informed and believe and thereon allege that the COUNTY has succumbed to the COMMISSION's threats and implicitly accepted the COMMISSION's offer to handle the alleged Coastal Act violations despite (a) the discretionary authority of the COUNTY to make said determinations under State and local statutory authority; (b) the vested rights obtained by Plaintiffs through issuance of the permit and the significant expenditures incurred in the installation of

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Regional Commission (1976) 17 Cal.3d 785, 791; (c) the absence of any Challenge or Appeal to the exemption decision; (d) the absence of any statutory requirement of a FLAN on exemption determinations to justify the COMMISSION's belated challenge or exercise of authority; (e) any retraction of the permit by the COUNTY; and (f) the three and four year statute of limitations on such statutory enforcement or penalty actions under California Code of Civil Procedure Sections 338 and 340 and Hittle v. Santa Barbara County Employees Retirement Ass'n (1985) 39 Cal.3d 37, 387.

27. The COMMISSION is not acting in any appellate capacity, but purportedly as an agent of the COUNTY, has demanded that the gate improvements (that were installed pursuant to the properly issued permit under Application 151297) for which Plaintiffs have vested rights, be removed or that they re-apply for a Coastal Development Permit (presumably independent of the retraction of the prior permit) through which the COUNTY and/or the COMMISSION has prematurely determined that a condition of public access to and from Twin Lakes State Beach will be imposed. This demand is made in excess of their authority without any environmental study of the health and safety hazards that may be encountered by Plaintiffs and/or members of the public as they traverse the dangerously steep and unstable slope or down the narrow driveway EASEMENT used for Plaintiffs ingress and egress and guest parking. The threat: if Plaintiffs did not re-apply for a Coastal Development Permit on the gate, it had to be removed, and if they ever re-install the permitted gate, the COMMISSION will impose civil administrative penalties under Public Resources Code Section 30821 as the gate purportedly reduces existing public prescriptive rights of access. No such public prescriptive rights have been established through the EASEMENT or the Bluff slope. Instead, the COUNTY and COMMISSION for at least the last 32 years (a 1987 COMMISSION Staff Report on CDP Application 3-81-055 related to 60 Geoffroy noted that the wood and chain link fence had long existed along the bluff slope, and for over twenty years access had been limited to private property owner use, but nonetheless secured an offer of dedication to the sandy beach shoreline between the bluff and the high tide line on 60 Geoffroy, but not down the bluff slope or over the EASEMENT) had noted the possibility of a historic trail but never set forth any evidence to support said claim, leaving it to members of the public to perfect whatever rights

 may have ripened. No member of the public ever took the challenge given the historical record of blockage.

- Development Permit application in which they have prematurely determined that public access conditions will be required, or alternatively a removal and discontinuance of use of the permitted gate, in the face of civil administrative penalties of \$11,250 per day, the COUNTY and/or the COMMISSION have acted in an arbitrary and capricious way, without any evidentiary support for said demands, and in a manner not authorized by law as (a) the COUNTY was given discretionary authority to make such exemption determinations under its certified Local Coastal Plan; (b) the COUNTY made a determination that the proposed gate depicted in **EXHIBIT A** met the exemption requirements of SCCC 13.20.061; (c) that neither the Local Coastal Plan or the State Coastal Act required any Final Local Action Notice (or any notice whatsoever) to the COMMISSION before the permit determination became final; and (d) no interested or aggrieved person or any Commissioner has formally challenged or appealed the permit determination nor has the permit been retracted.
- 29. The COMMISSION and COUNTY have a mandatory and ministerial duty to conform their actions to the standards and requirements of law.
- 30. Plaintiffs have a constitutionally protected right to use and enjoy their private property (as well as the permitted improvements thereon) and to bar others from trespassing thereon.
- 31. Pursuant to Nollan v. California Coastal Commission, 483 U.S. 825 (1987); Dolan v. City of Tigard, 512 U.S. 374 (1994) and Koontz v. St. Johns River Water Management District, 133 S.Ct. 2586 (2013), the COMMISSION may constitutionally impose a condition on a property owner's exercise of their property rights only if:
- a. The condition directly mitigates a public impact arising from the property owner's exercise of their property rights;
- b. The condition is roughly proportionate in both nature and extent to the public impact arising from the property owner's exercise of their property rights.
- 32. As there has never been any public right of access across the EASEMENT or down the bluff slope as described above, recorded or otherwise established, and as the COMMISSION and

COUNTY records undeniably reflect the fact that access down the bluff slope has been blocked (and for private use) for well over 50 years (predating the Coastal Act), the demands asserted (to retract the permit and/or remove and discontinue usage of the gate) accompanied with the threat of civil administrative penalties were arbitrary and capricious acts outside the COUNTY and COMMISSION's authority, and in excess of their jurisdiction.

- 33. There is no substantial evidence that the public ever actually prescriptively acquired any right of access down the EASEMENT or Bluff slope, or that the permitted gate at the entrance to the private drive impacted any such prescriptive right. Twin Lakes State Beach has many public pathways to the beach, including but not limited to those off 13<sup>th</sup> and 14<sup>th</sup> Avenue just a stone's throw away from the subject properties.
- 34. Because the COMMISSION and/or COUNTY has failed to proceed in a manner required by law, it has abused its discretion, and Plaintiffs are entitled to a writ of mandate directing the COMMISSION and COUNTY to (a) allow Plaintiffs to re-install the permitted entrance gate to the private drive and EASEMENT area; (b) to allow Plaintiffs to leave the fence improvements that were originally installed prior to the Coastal Act along the Bluff slope described above; and (c) cease and desist its threats of civil administrative penalties for said alleged violations of public access.
- 35. Plaintiffs have no plain, speedy, or adequate remedy available in the normal course of law other than mandamus and equitable relief from these threats.

WHEREFORE, Plaintiffs pray for judgment as follows:

- 1. For an order that Defendants have produced insufficient evidence to support the finding of any private or public prescriptive easement across Plaintiffs properties, including the EASEMENT and Bluff Slope;
- 2. For an alternative order, should defendants establish a private or prescriptive easement through historic use, that said easement was abandoned by Defendants non-use over the last five years of continuous and uninterrupted blockage, and Plaintiffs payment of any and all taxes during said time pursuant to California Code of Civil Procedure Sections 887.010 to 887.090 and Strong v. Baldwin (1908) 154 Cal.150, 161;

- 3. For an order quieting title to Plaintiffs properties, including the EASEMENT and Bluff Slope as not being burdened by any public or private easement of access to or from Twin Lakes State Beach;
- 4. Issuance of a writ of mandate directing and commanding the COUNTY and/or the COMMISSION to withdraw their demands for the retraction of Permit Nos. 151297 and B-161575;
- 5. Issuance of a writ of mandate directing and commanding the COUNTY and/or the COMMISSION to withdraw their demands for another Coastal Development Permit for the gate improvements depicted in EXHIBIT A, which will be conditioned upon a grant of public access without said rights being properly established by the Court;
- 6. Issuance of a writ of mandate directing and commanding the COUNTY and/or the COMMISSION to withdraw their threat of civil administrative penalties under Public Resources Code Section 30821 should Plaintiffs not remove the gate and bluff fence to allow public access to and from Twin Lakes State Beach
- 7. For an award of attorney's fees pursuant to California Code of Civil Procedure Section 1021.5;
  - For costs of suit incurred herein; and
  - For such other and further relief as the Court may deem just and proper.

Dated: February 20, 2019

LAW OFFICES OF IRA JAMES HARRIS

IRA JAMES HARRIS Attorney for Plaintiffs

1, Leland Parnagian, hereby declare:

I am the President of Fowler Packing Company, a California Corporation, the title holder to 60 Geoffroy Drive, Santa Cruz, California, one of the named Plaintiffs in the above-entitled Complaint for Quiet Title and a Writ of Mandamus. The matters stated therein are true of my own knowledge, unless stated on information and belief, in which case said matters are true based upon my information and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed on February 22, 2019 at Santa Cruz, California.

Leland Parnagian

MR-

I, William P. Sullivan, hereby declare:

I am a Trustee of the SULLIVAN FAMILY REVOCABLE TRUST DATED MAY 2, 1996, the title holder to 63 Geoffroy Drive, Santa Cruz, California, one of the named Plaintiffs in the aboveentitled Complaint for Quiet Title and a Writ of Mandamus. The matters stated therein are true of my own knowledge, unless stated on information and belief, in which case said matters are true based upon my information and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed on February \_\_\_\_\_, 2019 at Santa Cruz, California.

William P. Sullivan

Page 193 of 311

I, Mark A. Cauwels, hereby declare:

I am a Trustee of the MARK AND SUZANNE CAUWELS FAMILY TRUST INITIALLY CREATED ON JULY 30, 1992, the title holder to 70 Geoffroy Drive, Santa Cruz, California, and one of the named Plaintiffs in the above-entitled Complaint for Quiet Title and a Writ of Mandamus. The matters stated therein are true of my own knowledge, unless stated on information and belief, in which case said matters are true based upon my information and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed on February \_\_\_\_\_, 2019 at Santa Cruz, California.

Mark A. Cauwels

verified complaint for quiet title & petition for writ of mandamus

- 17 -

Exhibit 3 A-3-SCO-23-0003 Page 194 of 311

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## <u>YERIFICATION</u>

I, Norman L. Chapman, hereby declare:

I am a trustee of THE 2000 NORMAN I., CHAPMAN & CAROL S. CHAPMAN

REVOCABLE TRUST UNDER INSTRUMENT DATED JUNE 6, 2000, the title holder to 80 Geoffroy Drive, Santa Cruz, California, one of the named Plaintiffs in the above-entitled Complaint for Quiet Title and a Writ of Mandamus. The matters stated therein are true of my own knowledge, unless stated on information and belief, in which case said matters are true based upon my information and belief.

I declare under penalty of parjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed on February 23 2019 at Santa Cruz, California.

Norman L. Chapman

I, Dawna Sutton, hereby declare:

I am a Trustee of the SUTTON FAMILY REVOCABLE TRUST DATED OCTOBER 6, 1997, the title holder to 90 Geoffroy Drive, Santa Cruz, California, one of the named Plaintiffs in the above entitled Complaint for Quiet Title and a Writ of Mandamus. The matters stated therein are true of my own knowledge, unless stated on information and belief, in which case said matters are true based upon my information and belief.

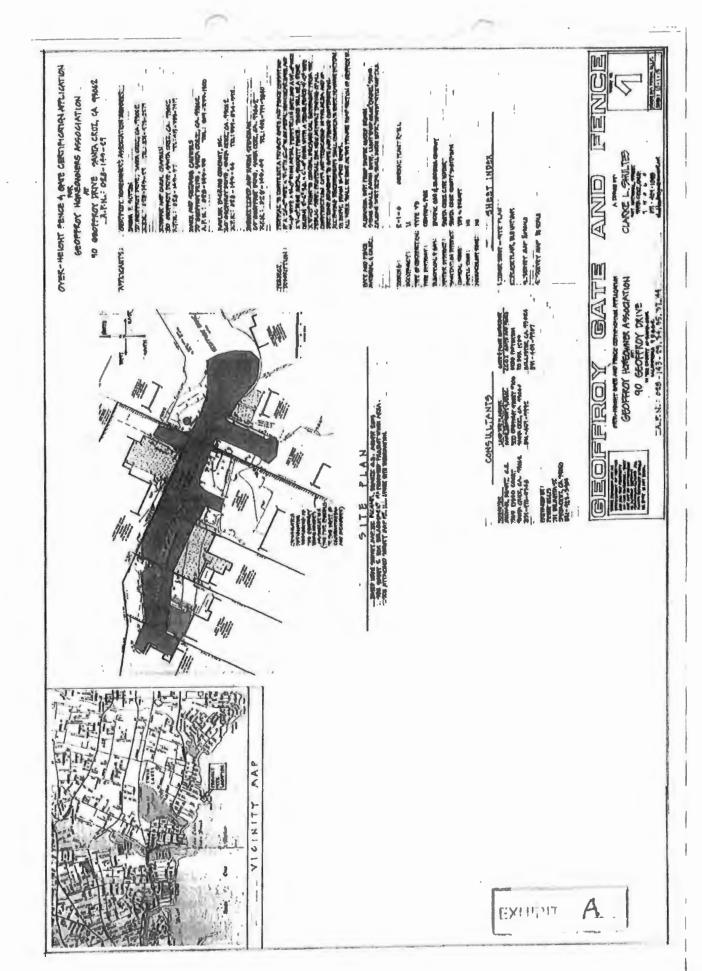
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed on February 22, 2019 at Santa Cruz, California.

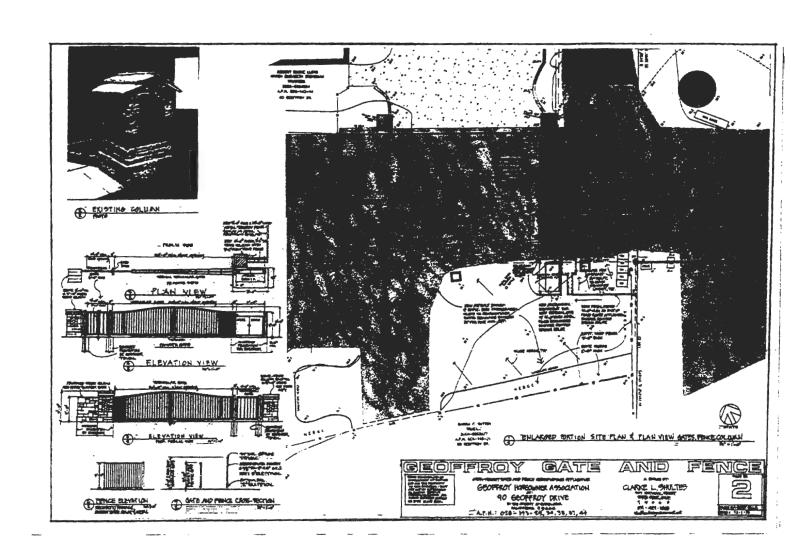
**Dawna Sutton** 

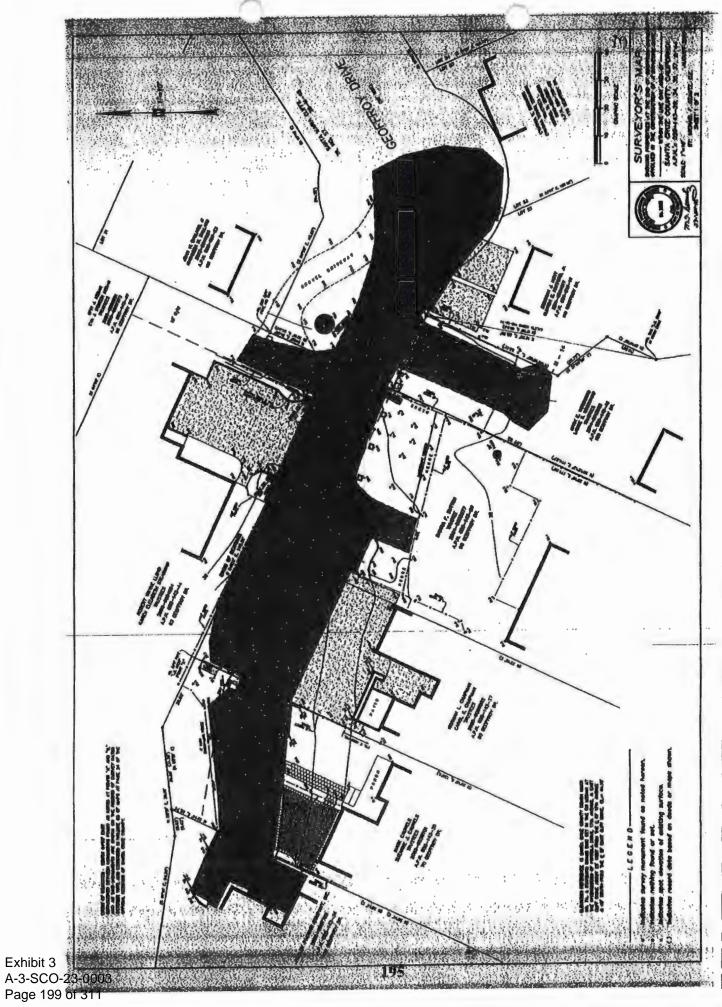
Dawna Sulton

verified complaint for quiet title & petition for writ of mandamus

- 19







		CIV-10		
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAP	NO. 99760	FOR COURT USE OHLY		
NAME: Ira James Harris				
FIRM NAME: Law Office of Ira James Hairls		ELECTRONICALLY FILED		
STREET ADDRESS One Camino Sobrente, Suite 208, P.D. Box 1478		Superior Court of California		
	E: CA ZIP CODE: 94563	•		
	0.: 925,281,4977	County of Santa Cruz		
E-MAIL ADDRESS: kajamesharris@gmail.com		9/19/2019 11:07 AM		
ATTORNEY FOR (name). Plaintiffs		Alex Calvo, Clerk		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA	COSTA	By: Helena Hanson, Deputy		
STREET ADDRESS: 701 Ocean Street LIAILING ADDRESS.	i	11.1. 4/1/11		
CITY AND ZIP CODE: Sente Cruz, CA 95060		HUUNOW MONSON		
BRANCH NAME:		/ Color C / C / Col		
Plaintiff/Petitioner: FOWLER PACKING COMPANY, et al				
Defendant/Respondent: COUNTY OF SANTA CRUZ, at al				
	Clarks Audionant	CASE NUIZBER.		
REQUEST FOR  Entry of Default	Clerk's Judgment	19C V00673		
(Application) X Court Judgment				
Not for use in actions under the Fair Debt	Buying Practices Act (Civ. Co	de, § 1788.50 et seq.) (see CIV-105)		
1 TO THE CLEDY: On the complaint or erose complain	at filed			
TO THE CLERK: On the complaint or cross-complain     on (data): payayana.	it ined			
a. on (dale); 02/27/2019				
b. by (name): See attachment 1 b				
c. X Enter default of defendant (names):				
See Attachment 1 c				
d. X I request a court judgment under Code of	Civil Procedure sections 585(b), 58	5(c), 989, etc., against defendant		
(names):				
See Attachment 1 d				
(Testimony required. Apply to the clerk for	e hearing date, unless the court will	enter a judgment on an affidavit under		
Code Civ. Proc., § 585(d).)				
e Enter clerk's judgment  (1) for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section				
1174(c) does not apply. (Code Civ. Proc., § 1169.)				
Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The				
Prejudgment Claim of Right to Pos	session was served in compliance	with Code of Civil Procedure section		
415.46.				
	585(a). (Complete the declaration	under Code Civ. Proc., § 585.5 on the		
reverse (item 5).)	4.			
(3) for default previously entered on (date		auladaad Balanca		
2 Judgment to be entered. a. Demand of complaint \$ 0.00	Amount Credits ackn	owledged <u>Bal</u> ance \$		
b. Statement of damages*	<b>\$</b> 555	•		
(1) Special	\$	\$		
(2) General	\$	\$		
c. Interest \$ 0.00	\$ 0 00	\$		
d. Costs (see reverse) \$ 000	\$ 000	\$		
e Attorney fees \$ 0.00	\$ 000	\$		
1. TOTALS \$ 0.00	\$ 000	\$		
g. Dally damages were demanded in complaint at t	he rate of: \$ 0.00 pe	day beginning (date):		
(* Personal injury or wrongful death actions; Code Cit		, , ,		
3 (Check if filed in an unlawful detainer case.) Le		ful detainer assistant information is on the		
reverse (complete item 4).	gui document dociotanico dimini			
Date: September 17, 2019	. ( _			
ira James Harns				
(TYPE OR PRINT NAME)	(SIGNATURE	OF PLAINTIFF OR ATTORIVEY FOR PLAINTIFF		
FOR COURT (1) X Default entered as reques	led on (date) 2 Q 1 Q 1Q	<u> </u>		
(O) Find Default NOT and and an are		1 / Helena Hanson		
ALEX CALVO		10 4 10 A Donat		
		WY WATER		
200.Cia C63UC4 Di C8 libuza	FOR ENTRY OF DEFAULT	Code of Civil Procedure, §§ 585-597, 1169		
CIV-100 [Rev. January 1, 2018] (App.	lication to Enter Default)	-		

**CIV-100** LINDA MARTIN CASE NULIBER Plaintiff/Petitioner: L18-08321 Defendant/Respondent: VERNON CHRISTOPHER STEELE 4. Legal document sasistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et soq.). A legal document assistant or unlawful detelner assistant \_\_\_\_ did \_\_\_X did not for compensation give advice or assistance with this form. If declarant has received any help or advice for pay from a legal document assistant or unlawful detainer assistant, state; a. Assistant's name: c. Telephone no.: b. Street address, city, and zip code: d. County of registration: e. Registration no.: f. Expires on (date); 5. X Declaration under Cede Civ. Proc., § 585.6 (for entry of default under Code Civ. Proc., § 585(e)). This action a. X is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruli Act). b. is is is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act). c. is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b). Declaration of mailing (Code Civ. Proc., § 587). A copy of this Request for Entry of Default was x not malled to the following defendants, whose addresses are unknown to plaintiff or plaintiff attorney (names): mailed first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows: (1) Mailed on (date): August 9, 2019 (2) To (specify names and addresses shown on the envelopes): I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct. Date: September 17, 2019 Ira James Hards (TYPE OR PRINT HAME) Memorandum of costs (required if money judgment requested). Costs and disbursements are as follows (Code Civ. Proc., § 1033.5): a. Clerk's filing fees ...... \$ 0.00 b. Process server's fees ......\$ 0.00 c. Other (specify): đ. e. TOTAL ..... \$ 0.00 Costs and disbursements are weived. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct Date: September 17, 2019 ira James Hards (TYPE OR PRINT NAME) (BIGNATURE ONDECLARALITI 8. Declaration of nonmititary status (required for a judgment). No defendant named in item 1c of the application is in the military service as that term is defined by either the Servicemembers Civil Relief Act, 50 U.S.C. App. § 3911(2), or California Military and Veterans Code section 400(b). I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date: September 17, 2019 Ira James harris (TYPE OR PRINT NAME) (SIGNATURE OF DECORANT)

REQUEST FOR ENTRY OF DEFAULT (Application to Enter Default)

CIV-100 [Rev. January 1, 2016]

#### **ATTACHMENT**

1 b: FOWLER PACKING COMPANY, a California Corporation, WILLIAM P. AND LINDA L. SULLIVAN, TRUSTEES OF THE SULLIVAN FAMILY REVOCABLE LIVING TRUST DATED MAY 2, 1996; MARK A. AND SUZANNE J. CAUWELS, TRUSTEES OF THE MARK AND SUZANNE CAUWELS FAMILY TRUST INITIALLY CREATED ON JULY 30, 1992; NORMAN L. CHAPMAN AND CAROL S. CHAPMAN, TRUSTEES OF THE 2000 NORMAN L. CHAPMAN & CAROL S. CHAPMAN REVOCABLE TRUST UNDER INSTRUMENT DATED JUNE 6, 2000; DAWNA SUTTON, TRUSTEE OF THE SUTTON FAMILY REVOCABLE TRUST DATED OCTOBER 6, 1997

1 c : ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS' TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO.

1 d: ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS' TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO.

6 a : ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS' TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO

**ELECTRONICALLY FILED** Superior Court of California County of Santa Cruz 1 IRA JAMBS HARRIS, SB #99760 LAW OFFICES OF IRA JAMES HARRIS 4/30/2019 2:58 PM 2 One Camino Sobrante, Suite 208 Alex Çaivo, Cletk P.O. Box 1478 By: Sándra González, Deputy 3 Orinda, CA 94563 Telephone: (925) 258-5100 Proclimite: (925) 281-4977 4 Б Attorney for Plaintiff's 6 7 SUPERIOR COURT OF CALIFORNIA B COUNTY OF SANTA CRUZ 9 10 FOWLER PACKING COMPANY, a California
Corporation, WILLIAM P. AND LINDA L.
SULLIVAN, TRUSTEES OF THE SULLIVAN
PAMILY REVOCABLE LIVING TRUST DATED
MAY 2, 1996; MARK A. AND SUZANNE J.
CAUWELS, TRUSTEES OF THE MARK AND
SUZANNE CAUWELS PAMILY TRUST
INITIALLY CREATED ON JULY 30, 1992;
NORMAN L. CHAPMAN AND CAROL S.
CHAPMAN TRUSTERS OF THE 2000 11 No.: 19CV00673 NOTICE OF PROOF OF PUBLICATION 12 13 14 February 27, 2019 Complaint Filed: 15 CHAPMAN, TRUSTBES OF THE 2000 NORMAN L, CHAPMAN & CAROL S. CHAPMAN REVOCABLE TRUST UNDER 16 INSTRUMENT DATED JUNE 6, 2000; DAWNA SUTTON, TRUSTER OF THE SUTTON FAMILY REVOCABLE TRUST DATED OCTOBER 6, 17 18 1997 19 Plaintiffs, 20 21 ¥8. COUNTY OF SANTA CRUZ, a Public Entity;
CALIFORNIA COASTAL COMMISSION, a
Public Agency; ALL PERSONS UNKNOWN
CLAIMING ANY LEGAL OR EQUITABLE
RIGHT, TITLE, ESTATE, LIEN OR INTEREST
IN THE PROPERTY DESCRIBED IN THE
COMPLAINT ADVERSE TO PLAINTIFFS'
TITLE OR ANY CLOUD ON PLAINTIFFS'
TITLE THERETY OF any DOES 1 to 100 including 22 23 24 25 TITLE THERETO; and DOBS 1 to 100, inclusive, 26 Defondants. 27 28 Proof of Bervior by Publication - 1 -

## Santa Cruz Sentinei

524 Encinal Street Sante Cruz, CA 95060 831-429-2415 scalegats@santecruzsentinel.com

3811050

IRA JAMES HARRIS, ESQ. ONE CAMINO SOBRANTE, SUITE 208 P.O BOX 1478 ORINDA, CA 94563

Proof of Publication (2015.5 C.C.P.)

STATE OF CALIFORNIA
88.
COUNTY OF SANTA CRUZ

#### **Public Notice**

#### ), the undersigned, declare:

That I am over the age of eighteen and not interested in the herein-referenced metter; that I am now, and at all times embraced in the publication herein mentioned was, a principal employee of the printer of the Santa Cruz Sentinei, a daily newspaper printed, published and circulated in the said county and adjudged a, newspaper of general circulation by the Superior Court of California in and for the County of Santa Cruz, under Proceeding No. 25794; that the advertisement (of which the annexed is a true printed copy) was published in the above-named newspaper on the following dates, to wit:

03/20/2019, 03/27/2019, 04/03/2019, 04/10/2019

I declare under penalty of perjury that, the foregoing is true and correct to the best of my knowledge.

This 10th day of April, 2019 at Santa Cruz, California.

Signature

Legal No.

0006309899





COLHENT\_A

## PROOF OF SERVICE

1

In re

Fowler Packing Company v. County of Santa Cruz Santa Cruz Superior Court Action No. 19CV00673
Our File No. 1142.1

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I am a citizen of the United States, a resident of the State of California, and am employed in the County of Contra Costa, State of California. I am over eighteen (18) years of age and am not a party to the above-entitled action. My business address is the law Offices of Ira James Harris, One Camino Sobrante, Suite 208, P.O. Box 1478, Orinda, California 94563. On the date referenced below, I served the following document(s) in the manner indicated below on the person(s) listed on the attached Service List:

#### NOTICE OF PROOF OF SERVICE BY PUBLICATION

- U.S MAIL [CCP §§ 1013[a] & 2015.5]: by placing the document(s) listed above in a sealed envelope, with First Class postage thereon fully prepaid, and deposited the same in the United States mail at Orinda, California, addressed as set forth on the attached Service List. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing, which deposits mail to the US Postal Service on the same day, with postage fully prepaid in the ordinary course of business.
- E-MAIL OR FACSIMILE TRANSMISSION [CCP 88 1010.6, 1013[e], 2015.5 & CRC 2008]: Based on court order or per agreement of the parties to accept service, I caused the documents to be sent to the listed persons at the e-mail or facsimile numbers listed on the attached Service List. I did not receive any error message or other indication that the transmission was unsuccessful. I am familiar with the firms practices in this regard and the documents were transmitted in the regular course of business.

PERSONAL DELIVERY: by personally delivering the document(s) listed above to the person(s) at the address(es) set forth on the Service List.

OVERNIGHT DELIVERY [CCP 88 1013(c) & 2015.5]: by placing the document(s) listed above in a scaled envelope marked next-day delivery by

(State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on April 30, 2019 at Orinda, California.

IDA TAMPO MADDIC

PROOF OF SERVICE

-1-

## SERVICE LIST

In re

Fowler Packing Company v. County of Santa Cruz Santa Cruz Superior Court Action No. 19CV00673
Our File No. 1142.1

County of Santa Cruz	Dana McRae T. Brooke Miller Santa Cruz County Counsel 701 Ocean Street, Room 505 Santa Cruz, CA 95060	TC: (831) 454-2040 Fax: (831) 454-2115 E: T.Brooke@santacruzcounty.us
California Coastal Commission	Xavier Becerra David G. Alderson Joel S. Jacobs Attorney General of California 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550	TC: (510) 879-0279 Fax: (510) 622-2270 E: Joel.Jacobs@doj.ca.gov

#### PROOF OF SERVICE

[C.C.P. Section 1013, 2015.5]

ln re

Fowler Packing Company v. County of Santa Cruz Santa Cruz Superior Court Action No. 19CV00673
Our File No. 1142.1

 I am a citizen of the United States, a resident of the State of California, and am employed in the County of Contra Costa, State of California. I am over eighteen (18) years of age and am not a party to the above-entitled action. My business address is the law Offices of Ira James Harris, One Camino Sobrante, Suite 208, P.O. Box 1478, Orinda, California 94563. On the date referenced below, I served the following document(s) in the manner indicated below on the person(s) listed on the attached Service List:

Plaintiff's REQUEST FOR ENTRY OF DEFAULT AND COURT JUDGMENT ALONG WITH NOTICE IF PROOF OF SERVICE BY PUBLICATION.

U.S MAIL [CCP §§ 1013(a) & 2015.5]: by placing the document(s) listed above in a

	sealed envelope, with First Class postage thereon fully prepaid, and deposited the same in the United States mail at Orinda, California, addressed as set forth on the attached Service List. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing, which deposits mail to the US Postal Service on the same day, with postage fully prepaid in the ordinary course of business.
	E-MAIL OR FACSIMILE TRANSMISSION [CCP §§ 1010.6, 1013(e), 2015.5 & CRC 2008]: Based on court order or per agreement of the parties to accept service, I caused the documents to be sent to the listed persons at the e-mail or facsimile numbers listed on the attached Service List. I did not receive any error message or other indication that the transmission was unsuccessful. I am familiar with the firms practices in this regard and the documents were transmitted in the regular course of business.
	PERSONAL DELIVERY: by personally delivering the document(s) listed above to the person(s) at the address(es) set forth on the Service List.
	OVERNIGHT DELIVERY [CCP §§ 1013(c) & 2015.5]: by placing the document(s) listed above in a sealed envelope marked next-day delivery by
х	(State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 17, 2019 at Orinda, California.

PROOF OF SERVICE

- 1 -

## SERVICE LIST

In re

Fowler Packing Company v. County of Santa Cruz Santa Cruz Superior Court Action No.19CV00673 Our File No. 1142.1

County of Santa Cruz	Ryan Thompson Santa Cruz County Counsel 701 Ocean Street, Room 505 Santa Cruz, CA 95060	TC: (831) 454-2040 Fax: (831) 454-2115 E: R.Thompson@santacruzcounty.us
California Coastal Commission	Xavier Becerra David G. Alderson Joel S. Jacobs Attorney General of California 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550	TC: (510) 879-0279 Fax: (510) 622-2270 E: Joel.Jacobs@doj.ca.gov

### **ELECTRONICALLY RECEIVED** 8/7/2020 3:09 PM 1 IRA JAMES HARRIS, SB #99760 LAW OFFICES OF IRA JAMES HARRIS One Camino Sobrante, Suite 208 P.O. Box 1478 3 Orinda, CA 94563 Telephone: (925) 258-5100 Facsimile: (925) 281-4977 5 Attorney for Plaintiffs/Petitioners 6 7 8 () 10 FOWLER PACKING COMPANY, a California Corporation, WILLIAM P. AND LINDA L. SULLIVAN, TRUSTEES OF THE SULLIVAN 11 MAY 2, 1996; MARK A. AND SUZANNE J. 12 CAUWELS, TRUSTEES OF THE MARK AND SUZANNE CAUWELS FAMILY TRUST 13 INITIALLY CREATED ON JULY 30, 1992: NORMAN L. CHAPMAN AND CAROL S. CHAPMAN, TRUSTEES OF THE 2000 NORMAN L. CHAPMAN & CAROL S. 15 CHAPMAN REVOCABLE TRUST UNDER 16 REVOCABLE TRUST DATED OCTOBER 6. 17 1997 18 Plaintiffs, 19 YS. 20 COUNTY OF SANTA CRUZ, a Public Entity; 21 CALIFORNIA COASTAL COMMISSION, a Public Agency; ALL PERSONS UNKNOWN 22 CLAIMIÑG ÂNY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST 23 IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS 24 TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO; and DOES 1 to 100, inclusive. 25 Defendants. 26 27

Electionically Filed Superior Court of California County of Santa Cruz August 10, 2020 Alex Calvo, Clerk By Deputy, Gonzalez, Sandra

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

FAMILY REVOCABLE LIVING TRUST DATED) INSTRUMENT DATED JUNE 6, 2000; DAWNA SUTTON, TRUSTEE OF THE SUTTON FAMILY

No.: 19CV00673

ORDER GRANTING PETITIONERS WRIT OF MANDAMUS PURSUANT TO C.C.P. SECTION 1085

Complaint Filed: February 27, 2019

ORDER GRANTING WRIT OF MANDAMUS

28

Petitioners are five property owners with a private driveway easement on Geoffrey Drive, Santa Cruz, located on a bluff above Twin Lakes State Beach. Petitioners challenge the Coastal Commission's jurisdiction to (1) reverse the County's exemption determination on their application for a Development Permit to install a gate and fence on their easement; (2)—require Petitioners to either remove the gate and fence or apply for a Coastal Development Permit (CDP); and (3)—impose civil penalties if Plaintiffs refuse to remove the gate and fence to allow public access to Twin Lakes State Beach. Petitioners seek a writ of mandate directing the County and the Coastal Commission to (1) withdraw demands for the retraction of their Development Permit; (2) withdraw demands for another CDP for the gate and improvements; and (3) withdraw a threat of civil administrative penalties under Pub. Resources Code §30821 in the event that Plaintiffs do not remove the gate and fence to allow public access to the beach.

The Commission asserts that Petitioners' requests for relief are not ripe for adjudication, because neither the County or the Commission has pursued any "formal" enforcement efforts; that Petitioners' failure to exhaust their administrative remedies by applying for a CDP bars their claim; and that the petition fails on the merits, because Petitioners did not apply for a Coastal Development Permit, they did not qualify for an exemption under the County's Local Coastal Plan (LCP), and there was no formal exemption determination or final agency action triggering the deadlines for Commission action. The Commission concedes that it does not have appellate jurisdiction but asserts that it may exercise its independent enforcement powers over the subject gate and fence.

# 1. The Regulatory Scheme For Exemption Determinations Under The LCP

The County has a certified Local Coastal Plan. Therefore, development review authority over any new development is "delegated to the local government that is implementing the local coastal program", and "shall not longer be exercised by the commission..". *Public Resources Code §30600(d) SCCC §13.20.080* provides the regulatory framework for the determination of exemptions from the requirement of a CDP, and the notice and hearing procedures thereafter. The exemption determination is to be made "by the local government at the time the application for development within the Coastal Zone is submitted or as soon thereafter as possible, and in all cases prior to the application being complete for processing"; and "may be made by any designated local government employee".

ORDER GRANTING WRIT OF MANDAMUS

ORDER GRANTING WRIT OF MANDAMUS

If the exemption determination is challenged by the applicant or an interested person, or if the County wishes to have a Commission determination as to the appropriate designation, the County is to notify the Commission by telephone and request the Executive Director's opinion. (SCCC §13.20.080 (B)) The Executive Director then has two working days to transmit his or her determination. (SCCC §13.20.080 (C)) If the Executive director's determination differs from the County's determination the Commission is to hold a hearing to determine the appropriate determination.(SCCC §13.20.080(D))

The information on development permits within the Coastal Zone which are exempt are to be maintained on the County's computer system. "Upon request a list of the exempt applications will be generated"; and "upon a request from the Coastal Commission Executive Director for any particular case" the County is to provide the same information that is required for permit exclusions, as set forth in subsection (F). (SCCC §13.20.080 (E))

## II. Petitioners' Application For A Development Permit

On October 20, 2016 Petitioners submitted an application to the County for a Development Permit and Over-Height Fence Certification for the installation of a gate and fence across the easement. [AR 15-18] The application identifies the project as being in the Coastal Zone [AR 15]. The application was "reviewed in light of 13.20.062" by County Planner Jerry Busch, the designated County employee authorized under the County's Local Costal Plan (LCP) to determine if the project was exempt from the requirement of a coastal development permit; and Mr. Busch determined that the project was exempt [AR 86]. On January 22, 2016 the County approved and issued the Development Permit. [AR 24]. In February 2016 Petitioners were issued a building permit [AR 31-33] and proceeded to install the fence and gate at a cost of \$175,000.

There were no challenges to the County's exemption determination on Petitioners' application, the County did not request an opinion from the Commission on the determination, and the Commission did not request a list of exempt applications or information on Petitioners' application. A June 6, 2018 entry in the County's computer system identifies Petitioner's application as exempt.

#### III. The Commission's Actions

In November 2017, the Commission began to make inquiries of County staff as to whether Petitioners' gate was permitted. JAR 87-88]. In January 2018 the County advised the Commission that the gate and fence were permitted and had been deemed exempt from a CDP [AR 86]. In a letter dated April 11, 2018 an Enforcement Supervisor for the Commission "formally" brought the County's attention to the Commission's position that a CDP was required for the "unpermitted" gate. The letter advised that the gate requires a CDP and "needs to be removed, or if not removed authorized by a CDP" and that any CDP would require provisions for public access to Twin Lakes State Beach. The Commission offered to "coordinate with County regarding resolution of the violations," and advised that if the County-did not act to resolve the matter and restore public access, the Commission "may impose enforcement action". [AR 36-37]

On May 4, 2018, the Commission sent a letter to Petitioners' titled "Notice of Violation," and references "the above referenced violation- file". The letter states that the County requested the Commission to take the "enforcement lead", and recites the basis for the Commission's conclusion that a CDP was required; states that "In cases involving violations of the public access provisions of the Coastal Act, as appears to be the case here" civil penalties of up to \$11,250 per day may be imposed under §30821(h) if the property owner does not correct the violations within 30 days of receiving written notification from the Commission regarding the violation; and further states "please consider this letter to be 'written notification' for purposes of §30821(h)"." The letter concludes by demanding that Petitioners submit "by June 8, 2018 a complete CDP application to authorize the subject gate and signs in a manner that respects historic public access and use or remove the gate and signs". [AR 44-45]

On June 1, 2018, in response to Petitioner's offer to meet and confer, the Enforcement supervisor for the Commission sent a letter to Petitioners' counsel asserting the Commission's authority to challenge the County's exemption determination, that a CDP was required which would be conditioned on public access, and demanding that that Petitioners submit a complete CDP application "by July 2, 2018 or remove the gate/fence" [AR 51-55].

On June 29, 2018. The Commission's Enforcement Supervisor again wrote to Petitioners' counsel, asking if Petitioners intended to apply for a CDP or if "we will need to address this matter

#### ORDER GRANTING WRIT OF MANDAMUS

through other means including formal enforcement action as detailed in our previous letters. " [AR 66]

On August 2, 2018 Petitioners agreed to temporarily remove the gate, under protest, in order to avoid the threatened civil penalties. [AR 83]

#### IV. Petitioners' Claims Are Ripe For Adjudication

The Commission contends that Petitioners' claims are not ripe, because the Commission merely expressed an opinion that a CDP was required for the gate, and it has never demanded that Petitioners apply for a CDP, has not pursued an enforcement action, and has not demanded a retraction of Petitioners' development permit. The letters from the Commission's Enforcement Supervisor titled Notice of Violation, referencing a violation file, and demanding that Petitioners apply for a CDP or remove the gate by specific deadlines demonstrates that the Commission has initiated an enforcement action. Petitioners' claims are ripe.

#### V. There Are No Administrative Remedies Available To Petitioners

The Commission essentially argues that Petitioners must accept the Commission's authority to challenge the County's exemption determination by submitting a new CDP application in order to exhaust their administrative remedies. However, Petitioners are without an available administrative remedy as to their present challenge to the Commission's authority and jurisdiction.

The Commission's reliance on South Coast Regional Commission v. Gordon (1977) 18 Cal. 3d 832, as authority for its argument that Petitioners are required "to raise their arguments to the Commission before seeking relief in the courts, even if they "did not apply for a permit because of the view that one was not required", is misplaced. In that case the court reasoned that the defendant was attempting "to raise by way of defense a matter which is initially committed to the Commission's determination, and which he has not presented to that agency". Here, however, Petitioners did apply to the County for a development permit under the County's certified LCP.

# VI. The Exemption Determination Was Made In Full Compliance With The County's Procedures Under The LCP

The Commission argues that Petitioners never applied for a CDP, and that there was only an "informal" belief by a County employee that the project was exempt—not a formal exemption determination. As authorized under SCCC §13.20.080—the County employee designated to make

ORDER GRANTING WRIT OF MANDAMUS

1))

exemption determinations under the County's LCP reviewed Petitioners' development permit application, which indicated that the project was in the Coastal Zone and determined that it was exempt from the CDP requirement.

# VII. Commission Does Not Have Authority To Challenge The County's 2016 Exemption Determination.

The Commission admits that it does not have appellate jurisdiction over the exemption determination and asserts instead that it has broad independent enforcement authority as to the subject gate and fence. The Commission cites no authority for this position. Moreover, Petitioners properly applied for a development permit, and the gate and fence were permitted under the County's LCP authority. Therefore, there is no violation to enforce.

The time frames for the County's exemption determination ("as soon as possible" after the application is submitted and in all cases prior to the application being deemed complete), and for the Commission's transmittal of a contrary determination (two working days after a local government's request for review) suggest that the County's exemption determinations are to be considered final within a short time frame, and do not remain open to challenges by the Commission many years later. The County's certified LCP does not require notice to the Commission when exemption determinations are made, and instead puts the Commission on inquiry notice as to these determinations. Not having made any inquiry or utilized the available procedures under SCCC §13.20.080 to review the County's exemption determination for error, the Commission no longer has authority to challenge the County's exemption determination, which is now final.

# VIII. The County Has Authority To Perform The Acts The Petition Seeks To Compel

In light of the foregoing, the County's position that the writ is not properly directed at the County, because the Commission retains authority to challenge the County's exemption determination and enforce compliance with State law, is incorrect.

Petitioner's First Cause of Action for a Writ of Mandamus directing the County and the Coastal Commission to (1) withdraw demands for the retraction of their Development Permit; (2) withdraw demands for another CDP for the gate and improvements; and (3) withdraw any threat of civil

ORDER GRANTING WRIT OF MANDAMUS

1	administrative penalties under Pub. Resources Code §30821 in the event that Plaintiffs do not remove		
2	the gate and fence to allow public access to the beach is HEREBY GRANTED.		
3	APPROVAL AS TO FORM:		
4	Dated: July 30, 2020	Law Office of Ira James Harris	
5			
6		By 4. (1)	
7 8		Ira James Harris, Esq. Counsel for Plaintiffs/Petitioners Fowler Packing Company et. al.	
9		• , ,	
10	Dated: July 31_, 2020	Santa Cruz County Counsel	
11		03	
12		Daniel Zazueta, Esq. Counsel for County of Santa Cruz	
13	August 5, 2020	·	
14	Dated: July 2020	Attorney General of California	
15 16		Joel Jacobs (Mail 2017) And Declaration (Mail 2017) And De	
17 18		Joel S. Jacobs, Esq. Counsel for the California Coastal	
19	EURO DO OBSERSO.	Commission	
20	IT IS SO ORDERED:	SANTA CRUZ SUPERIOR COURT	
21	Dated: August, 2020		
22		By TERDLE	
23		Hon, Judge Timothy R. Volkmann	
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ORDER GRANTING WRIT OF MANDAMUS

**ELECTRONICALLY FILED** Superior Court of California County of Santa Cruz 3/24/2020 11:51 AM IRA JAMES HARRIS, SB #99760 1 Alex Calvo, Clerk LAW OFFICES OF IRA JAMES HARRIS By: Sandra Gortzalez, Deputy One Camino Sobrante, Suite 208 P.O. Box 1478 3 Orinda, CA 94563 Telephone: (925) 258-5100 4 Facsimile: (925) 281-4977 5 Attorney for Plaintiff's 6 7 SUPERIOR COURT OF CALIFORNIA 8 COUNTY OF SANTA CRUZ 9 10 11 No.: 19CV00673 FOWLER PACKING COMPANY, a California Corporation, WILLIAM P. AND LINDA L. DECLARATION OF IRA JAMES HARRIS 12 SULLIVAN, TRUSTEES OF THE SULLIVAN IN SUPPORT OF PLAINTIFFS' FAMILY REVOCABLE LIVING TRUST DATED) APPLICATION FOR A DEFAULT 13 MAY 2, 1996; MARK A. AND SUZANNE J. CAUWELS, TRUSTEES OF THE MARK AND JUDGMENT AGAINST THE MEMBERS OF THE PUBLIC ON THE FIRST AND 14 SUZANNE CAUWELS FAMILY TRUST SECOND CAUSES OF ACTION FOR INITIALLY CREATED ON JULY 30, 1992; QUIET TITLE 15 NORMAN L. CHAPMAN AND CAROL S. CHAPMAN, TRUSTEES OF THE 2000 NORMAN L. CHAPMAN & CAROL S CHAPMAN REVOCABLE TRUST UNDER INSTRUMENT DATED JUNE 6, 2000; DAWNA Date: 17 SUTTON, TRUSTEE OF THE SUTTON FAMILY Time: REVOCABLE TRUST DATED OCTOBER 6. Dept.: 18 1997 Judge: Trial Date: None 19 Plaintiff's, 20 February 27, 2019 Complaint Filed: 21 COUNTY OF SANTA CRUZ, a Public Entity; CALIFORNIA COASTAL COMMISSION, å Public Agency; ALL PERSONS UNKNOWN 23 CLAIMÍNG ÁNY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN ÓR INTEREST 24 IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS 25 TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO; and DOES 1 to 100, inclusive, 26 Defendants. 27 28 DECLARATION OF IRA JAMES HARRIS ISO PLAINTIFFS' APPLICATION FOR DEFAULT JUDGMENT |

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# I, IRA JAMES HARRIS, hereby declare:

- I am an attorney at law duly licensed to practice before all the courts of the State of 1. California and am counsel of record for FOWLER PACKING COMPANY, a California Corporation, WILLIAM P. AND LINDA L. SULLIVAN, TRUSTEES OF THE SULLIVAN FAMILY REVOCABLE LIVING TRUST DATED MAY 2, 1996; MARK A. AND SUZANNE J. CAUWELS. TRUSTEES OF THE MARK AND SUZANNE CAUWELS FAMILY TRUST INITIALLY CREATED ON JULY 30, 1992; NORMAN L. CHAPMAN AND CAROL S. CHAPMAN, TRUSTEES OF THE 2000 NORMAN L. CHAPMAN & CAROL S. CHAPMAN REVOCABLE TRUST UNDER INSTRUMENT DATED JUNE 6, 2000; DAWNA SUTTON, TRUSTEE OF THE SUTTON FAMILY REVOCABLE TRUST DATED OCTOBER 6, 1997, the named Plaintiffs in this action. The following is true of my own personal knowledge and I can and will competently so testify to any and all facts set forth below.
- Attached as Exhibit C is a true and correct copy of the aerial photograph that I ordered 2. from Aerial Archives (Sec. aerialarchives.com) in July 2018 whose available imagery included black and white photographs from 1963 through 1968 at 1:20,000 to 1:36,000 scale, and this color photograph dated September 13, 1973. The fence along the northeastern bluff is clearly visible in 1973.
- Attached as Exhibit D is a true and correct copy of a photograph that I took in July 2018 3. of the 15 foot wide private driveway as it extends into 70 Geoffroy Drive and the blufftop condition that existed showing that the 6 foot chain link fence topped with barbed wire and the chained and padlocked gate had been totally overgrown for years, totally destroying any evidence of a pathway or access through that area. Attached as Exhibit E is a true and correct copy of a photograph that I took in July 2018 of the northern portion of 63 Geoffroy Drive that extends to Twin Lakes State Beach, below and alongside 70 Geoffroy Drive and the bluff condition that existed below the 6 foot chain link fence topped with barbed wire and the chained and padlocked gate had been totally overgrown for years. totally destroying any evidence of a pathway or access through that area. I found these very same conditions during my multiple visits to the area in 2009 and 2010.
- Attached as Exhibit F is a true and correct copy of the September 19, 2019 Default that 4. was entered against the MEMBERS OF THE PUBLIC named in the First and second causes of action

for Quiet Title as "ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS' TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO".

Ira James Harris

DECLARATION OF IRA JAMES HARRIS ISO PLAINTIFFS' APPLICATION FOR DEFAULT JUDGMENT  $\,3$ 







Exhibit 3 A-3-SCO-23-0003 Page 220 of 311

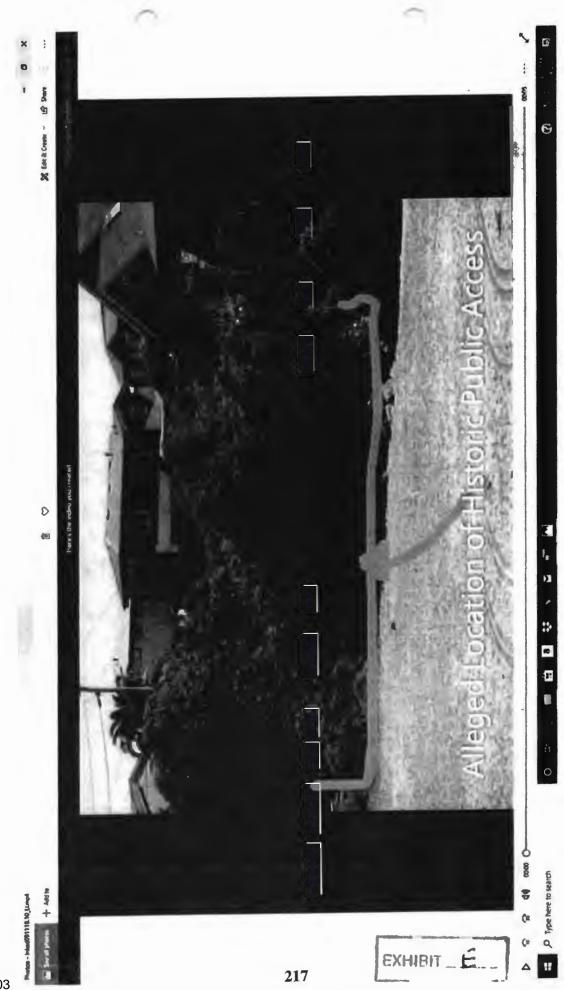


Exhibit 3 A-3-SCO-23-0003 Page 221 of 311

			CIV-100
	BAR NO: 59760	FOR COURT US	E ONLY
NAME: Ira James Houls			
FIRM NAME: Law Office of its James Harris		ELECTRONICAL	LVEILED
STREET ADDRESS: One Carelino Sebsarde, Suite 208, P.O. Box 1478			
	STATE CA ZIP CODE: 94583	Superior Court of	
TELEPHONE NO: 926 258 5100 FA	County of Santa Cruz		
E-IAVL ALIDRESS: Irajamustratris@gmail.com	9/19/2019 11:07	AM	
ATTORNEY FOR (name) Plaintills	Alex Calvo, Clerk		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONT	TRA COSTA	By: Helena Hans	
STREET ADDRESS: 701 Ocean Street	7/1/2011	y, peputy	
MALING ADDRESS:	MANAMA. J.	LARAGO	
CITY AND ZIP CODE: Series Civz, CA 950C0 BRANCH NAME:	1 maran	MA AMON	
Plaintif!/Petitioner: FOWLER PACKING COMPANY, et al		-	
Defendant/Respondent: country of SANTA CRUZ, et al.			
REQUEST FOR  Entry of Default	Clerk's Judgment	CASE HUMBER	- 0
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Not for use in actions under the Fair Det	of Buying Practices Act (Civ.	Code, \$ 1788.50 et seu.)	(see CIV-105)
TO THE CLERK: On the complaint or cross-comp     on (data): expresses	Staint INCO		
a. on (dale): 02/27/2019			
b. by (name): See ellectment 1 b			
c.  Enter default of defendant (names):			
See Attachment 1 c			
d. X I request a court judgment under Code (names):	of Civil Procedure sections 585(b)	, 585(c), 989, etc., against del	endant
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(Testimony required. Apply to the clerk for	or a honring date, unless the court	t will enter a judament on an a	flidavit under
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1174(c) does not apply. (Code Civ.			
	nts, subtenents, named claimants,		
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(3) for default previously entered on (de	e(e):		
. Judgment to be entered.	Amount Credits e	acknowledged	Balance
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g. Daily damages were demanded in complaint a	at the rate of: \$ 0.00	per day beginning (date):	
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mn Adopted for Mandatory Use REQUE	ST FOR ENTRY OF DEFAUL	Code of Civil Pro	ordure, £§ 585-587, 1969
CON CONTROL OF CHARLES	pplication to Enter Default)		www.courts ca pov

EXI IBIT\_F

Exhibit 3 A-3-SCO-23-0003 Page 223 of 311 (Application to Enfer Default)

#### **ATTACHMENT**

1 b: FOWLER PACKING COMPANY, a California Corporation, WILLIAM P. AND LINDA L. SULLIVAN, TRUSTEES OF THE SULLIVAN FAMILY REVOCABLE LIVING TRUST DATED MAY 2, 1996; MARK A. AND SUZANNE J. CAUWELS, TRUSTEES OF THE MARK AND SUZANNE CAUWELS FAMILY TRUST INITIALLY CREATED ON JULY 30, 1992; NORMAN L. CHAPMAN AND CAROL S. CHAPMAN, TRUSTEES OF THE 2000 NORMAN I.. CHAPMAN & CAROL S. CHAPMAN REVOCABLE TRUST UNDER INSTRUMENT DATED JUNE 6, 2000; DAWNA SUTTON, TRUSTEE OF THE SUTTON FAMILY REVOCABLE TRUST DATED OCTOBER 6, 1997

1 c : ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS' TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO.

1 d: ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS' TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO.

6 a : ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS' TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO

1142,1 Plat,

**ELECTRONICALLY FILED** Superior Court of Celifornia IRA JAMES HARRIS, SB #99760 LAW OFFICES OF IRA JAMES HARRIS One Camino Sobranio, Sulto 208 1 County of Santa Cruz 4/30/2019 2:58 PM 2 Alex Çalvo, Clerk P.O. Box 1478 By: Sandra González, Deputy 3 Orlnda, CA 94563 Telephone: (925) 258-5100 Pacsimile: (925) 281-4977 5 Attorney for Plaintiffs 6 7 SUPERIOR COURT OF CALIFORNIA B 9 COUNTY OF SANTA CRUZ 10 FOWLER PACKING COMPANY, a California Corporation, WILLIAM P. AND LINDA L. SULLIVAN, TRUSTERS OF THE SULLIVAN FAMILY REVOCABLE LIVING TRUST DATED 11 No.: 19CY00673 12 NOTICE OF PROOF OF PUBLICATION FAMILY REVOCABLE LIVING TRUST DATE
MAY 2, 1996; MARK A. AND SUZANNE J.
CAUWELS, TRUSTEES OF THE MARK AND
SUZANNE CAUWELS FAMILY TRUST
INITIALLY CREATED ON JULY 30, 1992;
NORMAN L. CHAPMAN AND CAROL S.
CHAPMAN, TRUSTEES OF THE 2000
NORMAN L. CHAPMAN & CAROL S.
CHAPMAN BEVOCABLE TRUST LINDER 13 14 15 Complaint Filed: February 27, 2019 16 CHAPMAN REVOCABLE TRUST UNDER INSTRUMENT DATED JUNE 6, 2000; DAWNA SUTTON, TRUSTEE OF THE SUTTON FAMILY REVOCABLE TRUST DATED OCTOBER 6, 17 18 1997 19 20 Plaintiffs, 21 COUNTY OF SANTA CRUZ, a Public Entity; CALIFORNIA COASTAL COMMISSION, a Public Agency; ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE PROPERTY DESCRIBED IN THE 22 23 24 COMPLAINT ADVERSE TO PLAINTIPFS'
TITLE OR ANY CLOUD ON PLAINTIPFS'
TITLE THERETO; and DOES 1 to 100, Inclusivo, 25 26 Defendants. 27 28 - 1 -Proof of Bervior by Publication

#### Santa Cruz Sentinei

324 Enoinal Street Santa Cruz, CA 95060 631-429-2416 scalegals@sanlacruzsentinel.com

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IRA JAMES HARRIS, ESQ. ONE CAMINO SOBRANTE, SUITE 208 P.O BOX 1478 ORINDA, CA 94563

Proof of Publication (2016.5 C.C.P.)

STATE OF CALIFORNIA
S8.
COUNTY OF SANTA CRUZ

**Public Notice** 

i, the undersigned, declare:

That I am over the age of eighteen and not interested in the herein-referenced malter; that I am now, and at all times embraced in the publication herein mentioned was, a principal employee of the printer of the Santa Cruz Sentinel, a daily newspaper printed, published and circulated in the said county and adjudged a, newspaper of general circulation by the Superior Court of California in and for the County of Santa Cruz, under Proceeding No. 25794; that the advertisement (of which the ennexed is a true printed copy) was published in the above-named newspaper on the following dates, to wit:

03/20/2019, 03/27/2019, 04/03/2019, 04/10/2019

I dectare under penalty of perjury that, the foregoing is tru and correct to the best of my knowledge.

This 10th day of April, 2019 at Santa Cruz, California.

Signature

Legal No. 0006309899

exhibit\_A\_

# PROOF OF SERVICE [C.C.P. Section 1013, 2015.5]

ln re

Fowler Packing Company v. County of Santa Cruz Santa Cruz Superior Court Action No. 19CV00673
Our File No. 1142.1

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I am a citizen of the United States, a resident of the State of California, and am employed in the County of Contra Costa, State of California. I am over eighteen (18) years of age and am not a party to the above-entitled action. My business address is the law Offices of Ira James Harris, One Camino Sobrante, Suite 208, P.O. Box 1478, Orinda, California 94563. On the date referenced below, I served the following document(s) in the manner indicated below on the person(s) listed on the attached Service List:

#### NOTICE OF PROOF OF SERVICE BY PUBLICATION

- U.S MAIL [CCP §§ 1013(a) & 2015.5]: by placing the document(s) listed above in a sealed envelope, with First Class postage thereon fully prepaid, and deposited the same in the United States mail at Orinda, California, addressed as set forth on the attached Service List. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing, which deposits mail to the US Postal Service on the same day, with postage fully prepaid in the ordinary course of business.
- E-MAIL OR FACSIMILE TRANSMISSION [CCP §§ 1010.6, 1013(e), 2015.5 & CRC 2008]: Based on court order or per agreement of the parties to accept service, I caused the documents to be sent to the listed persons at the e-mail or facsimile numbers listed on the attached Service List. I did not receive any error message or other indication that the transmission was unsuccessful. I am familiar with the firms practices in this regard and the documents were transmitted in the regular course of business.
- PERSONAL DELIVERY: by personally delivering the document(s) listed above to the person(s) at the address(es) set forth on the Service List.
- OVERNIGHT DELIVERY [CCP 88 1013(c) & 2015.5]: by placing the document(s) listed above in a scaled envelope marked next-day delivery by
- (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on April 30, 2019 at Orinda, California.

. . ,

IRA JAMES HARRIS

PROOF OF SERVICE

- 1 -

#### SERVICE LIST

In re

Powler Packing Company v. County of Santa Cruz Santa Cruz Superior Court Action No. 19CV00673
Our File No. 1142.1

County of Santa Cruz	Dana McRae T. Brooke Miller Santa Cruz County Counsel 701 Ocean Street, Room 505 Santa Cruz, CA 95060	TC: (831) 454-2040  Pax: (831) 454-2115  E: T.Brooke@santacruzcounty.us
California Coastal Commission	Xavier Becerra David G. Alderson Joel S. Jacobs Attorney General of California 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550	TC: (510) 879-0279 Fax: (510) 622-2270 E: <u>Joel.Jacobs@doj.ca.gov</u>

#### PROOF OF SERVICE

[C.C.P. Section 1013, 2015.5]

ln re

Fowler Packing Company v. County of Santa Cruz Santa Cruz Superior Court Action No. 19CV00673
Our File No. 1142.1

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27 28 age and am not a party to the above-entitled action. My business address is the law Offices of Ira James Harris, One Camino Sobrante, Suite 208, P.O. Box 1478, Orinda, California 94563. On the date referenced below, I served the following document(s) in the manner indicated below on the person(s) listed on the attached Service List:

Plaintiff's REQUEST FOR ENTRY OF DEFAULT AND COURT JUDGMENT ALONG WITH NOTICE IF PROOF OF SERVICE BY PUBLICATION.

I am a citizen of the United States, a resident of the State of California, and am

employed in the County of Contra Costa, State of California. I am over eighteen (18) years of

U.S MAIL [CCP §§ 1013(a) & 2015.5]: by placing the document(s) listed above in a sealed envelope, with First Class postage thereon fully prepaid, and deposited the same in the United States mail at Orinda, California, addressed as set forth on the attached Service List. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing, which deposits mail to the US Postal Service on the same day, with postage fully prepaid in the ordinary course of business.

E-MAIL OR FACSIMILE TRANSMISSION [CCP §§ 1010.6, 1013(e), 2015.5 & CRC 2008]: Based on court order or per agreement of the parties to accept service, I caused the documents to be sent to the listed persons at the e-mail or facsimile numbers listed on the attached Service List. I did not receive any error message or other indication that the transmission was unsuccessful. I am familiar with the firms practices in this regard and the documents were transmitted in the regular course of business.

PERSONAL DELIVERY: by personally delivering the document(s) listed above to the person(s) at the address(es) set forth on the Service List.

OVERNIGHT DELIVERY [CCP §§ 1013(c) & 2015.5]: by placing the document(s) listed above in a scaled envelope marked next-day delivery by

(State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 17, 2019 at Orinda, California.

By IRA JAMES HARRIS

PROOF OF SERVICE

- 1 -

#### SERVICE LIST

In re

Fowler Packing Company v. County of Santa Cruz Santa Cruz Superior Court Action No.19CV00673 Our File No. 1142,1

County of Santa Cruz	Ryan Thompson Santa Cruz County Counsel 701 Ocean Street, Room 505	TC: (831) 454-2040 Fax: (831) 454-2115 E:
	Santa Cruz, CA 95060	R.Thompson@santacruzcounty.us
California	Xavier Becerra	TC: (510) 879-0279
Coastal	David G. Alderson	Fax: (510) 622-2270
Commission	Joel S. Jacobs Attorncy General of California 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550	E: Joel.Jacobs@doj.ca.gov

# CALIFORNIA COASTAL COMMISSION

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



May 21, 2021

Sent Electronically
Sheila.McDaniel@santacruzcounty.us
Sheila McDaniel
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

Subject: County Coastal Development Permit Application Number 201302 (70 Geoffroy Drive Bluff Armoring Project)

Dear Ms. McDaniel:

The purpose of this letter is to respond to Ira Harris's letter dated October 29, 2020, regarding pending Santa Cruz County Coastal Development Permit (CDP) Application No. 201302, which seeks permanent authorization for temporary emergency bluff armoring and drainage project (installed pursuant to a County emergency CDP) at the blufftop and on the bluff face above Black's Point Beach (i.e., the downcoast portion of Twin Lakes State Beach) at the upcoast end of Geoffroy Drive in the Live Oak area of the County. Specifically, we would like to respond to Mr. Harris's assertions related to the Coastal Commission's open violation cases, as well as his assertions that there are no public recreational access issues here and that the subject application represents a "like-kind repair." We would also like to respond to his mischaracterizations of the pending litigation and the law. In summary, we do not agree with Mr. Harris's assertions, do not find his reasoning sound, and do not believe that his comments are on-point or helpful to the process.

We stand by our previous comments regarding the baseline condition against which the subject CDP should be evaluated, and issues related to the subject application's consistency with both the Coastal Act and the LCP (see attached letter dated October 23, 2020). The comments in this letter are simply intended to respond to assertions made by Mr. Harris. Accordingly, please consider the following:

#### Coastal Commission Violation Cases V-3-01-055 and V-3-18-0018

First, contrary to Mr. Harris's assertions, there are open and unresolved Coastal Commission enforcement cases related to unpermitted development at this location. Those open violations are separate from ongoing litigation related to a vehicular gate constructed along Geoffroy Drive in 2017. Commission Enforcement Case Numbers V-3-01-055 and V-3-18-0018 are thus unrelated to the litigation. Those violations date

<sup>&</sup>lt;sup>1</sup> While V-3-18-0018 includes the placement of the vehicular gate across Geoffroy Drive, it also describes other violations (including the blufftop-edge fence, locked blufftop-edge gate, barbed wire, restrictive signage, the planting of bluff-area vegetation, and the use of security guards).

back to the mid-1990s, and involve development designed to prevent public use of a historic pedestrian bluff face pathway to/from Geoffroy Drive and Black's Point Beach.<sup>2</sup> They include but are not limited to the erection of a fence at the blufftop edge, a locked blufftop edge gate, barbed wire, and restrictive signage; the planting of bluff-area vegetation; and the use of security guards. The blufftop and bluff area associated with the proposed project is the same area associated with the violations described; the temporary bluff armoring and drainage measures (now proposed to be authorized permanently in this CDP application) are in the same bluff area where pedestrians historically accessed the beach; and the now-proposed blufftop-edge fence is located in the same area of the previously extant and unpermitted blufftop-edge fence, which is a subject of the Commission's enforcement cases.

Mr. Harris contends that the alleged baseline lacks factual support; that the barbed wire and restrictive signage have existed for decades; that these issues were resolved in the recent litigation related to the vehicular gate; and that there are no outstanding public access issues or questions at this site.

Regarding Mr. Harris's contentions that the Commission's identified baseline lacks factual support and that the issue of historical access by the public at this bluff location has already been decided by the recent litigation related to the vehicular gate, we would reiterate that the Commission's Enforcement Case Numbers V-3-01-055 and V-3-18-0018 are existing, open, and unresolved violations of the Coastal Act and the LCP. In addition, the litigation concerns a vehicular gate that was constructed across Geoffroy Drive about 125 feet downcoast of the bluff area in question. Although there were some discussions surrounding access between Geoffroy Drive and Black's Point Beach in that case, the court's decision addresses only whether the Commission can revisit the validity of the County's CDP determinations for that vehicular gate. The court made no determination as to the level or type of historical public access along the bluff. On the contrary, the court's order affected a different area on a different property altogether. Moreover, any development that proceeded without the requisite Coastal Act/LCP authorization constitutes a Coastal Act/LCP violation, regardless of whether it blocks an accessway over which the public has established rights.

Over the course of the court filings for the litigation surrounding the vehicular gate, Eugene Shklar, a previous owner of 70 Geoffroy Drive, acknowledged that he is responsible for some of the violations that are the subject of open Commission violations V-3-01-055 and V-3-18-0018. Mr. Shklar's declaration indicates that he himself "chose to permanently close off the access" from Geoffroy Drive to Blacks Point Beach in 2001. Mr. Shklar details his actions as follows: he installed barbed wire atop the blufftop fence; constructed a wooden fence at the base of the bluff, also with barbed wire; posted five signs throughout the area that conveyed various messages, including "no trespassing/private property," "do not enter," and "no beach access;" hired a

<sup>&</sup>lt;sup>2</sup> Please see letters dated April 11, 2018, May 4, 2018, June 1, 2018, and June 28, 2018, previously provided to you, for a further description of these violations.

uniformed security guard; and then let thorny blackberry vines and other vegetation grow in until they completely obscured the former pathway.

In addition to Mr. Shklar's admission of responsibility for components of the unpermitted development at issue in V-3-01-055 and V-3-18-0018, members of the public have also conveyed similar accounts of efforts to restrict access (including the use of signage, vegetation, barbed wire, fencing, and security guards) specifically to deter access along trails that connected Geoffroy Drive to Black's Point Beach. On this point, there is an ongoing prescriptive rights study being conducted to determine the historical level and type of public access that may have existed between Geoffroy Drive and Black's Point Beach prior to the unpermitted blockage of that accessway. In short, and contrary to Mr. Harris's assertions, the question of the level and type of public access and associated rights as it relates to the subject bluff area remain unanswered, and efforts to address such questions are ongoing. It is simply inaccurate to cite the court's ruling as evidence to the contrary. And again, the violation allegations are based on the evidence of unpermitted development, which is a violation regardless of the level of historic use.

Mr. Harris's claim that "any action on said 'alleged' violation ... would be time barred" is similarly both incorrect and irrelevant to the issue before the County. The courts have made it clear that, independent of the viability of any judicial action, it is appropriate for a body reviewing a CDP application to view the baseline for that application as if any unpermitted development had not occurred (see *LT-WR*, *L.L.C. v. California Coastal Commission* (2007) 152 Cal.App.4<sup>th</sup> 770, 797). Even if the statute of limitations were relevant, Mr. Harris cites inapplicable statutory provisions from the Code of Civil Procedure. There is no limitation on the Commission's ability to issue an administrative order or to file for injunctive relief, and even administrative penalties can be imposed many years after the initiation of a violation if the violation is ongoing. These principles were recently reaffirmed by the California Court of Appeals in *Lent v. California Coastal Commission* (April 5, 2021, modified April 16, 2021, 2<sup>nd</sup> DCA, B292091), where the court, just last month, upheld the Commission's issuance of both a cease and desist order and a penalty in response to an access blockage that had been in place for decades, much like here.

Mr. Harris contends that the subject application, County CDP Application Number 201302, is a "like-kind repair," and asserts that no CDP is required for such work.

County CDP Application No. 201302 is not a "like-kind emergency repair" or a "restoration of the private driveway atop the bluff," as Mr. Harris claims. Although Application No. 201302 is the LCP-required follow-up CDP application to County-issued Emergency CDP (ECDP) No. 201227, and the scope of work appears to include road and storm drain improvements atop the bluff similar to what was there before, the emergency work also went well beyond a "like-kind repair." Specifically, the current project includes the 1.4:1 geogrid reinforced fill slope keyed into the Purisima formation with significant slope benches and subdrains that represents new shoreline armoring on the bluff under the LCP, and it is not at all like what was present before. In addition, the current project also includes placement of a roughly four-foot-tall black chain-link fence

at the blufftop edge. Although a fence did exist along the blufftop edge roughly at the location of the fence that was constructed under ECDP No. 201227, a fence at this location has never been authorized by a CDP in the nearly 50 years since CDPs³ were first required for "the placement of any solid material or structure" (see Coastal Act Section 30106 and Implementation Plan (IP) Section 13.20.040 of the County's Local Coastal Program (LCP)). Replacement of unauthorized and illegal development cannot constitute a "like-kind repair."

In fact, based on our records, including statements by members of the public, it appears that various fences/gates have been erected, removed, and replaced at this location without CDP authorization since February 1, 1973 (and accordingly are a component of open Coastal Commission Enforcement Case Numbers V-3-01-055 and V-3-18-0018). And contrary to Mr. Harris's assertions, the staff report for Commission CDP 3-81-55-A in 1986 (applicable to residential development at 60 Geoffroy Drive, just upcoast of the current CDP application site) indicates that there were multiple trails that provided through public access from Geoffroy Drive to Black's Point Beach in the general bluff area in question at the end of Geoffroy Drive, including both the trail where the emergency development was installed and a trail slightly further upcoast near 60 Geoffroy Drive. The 1986 staff report indicates that erosion and the construction of a wooden fence sometime after 1985 blocked the public's access to the trail near 60 Geoffroy, 4 and that the installation of a barbed wire fence blocked the public's access to the other trail (i.e., the trail that was in the ECDP area). Notably, there is evidence to suggest that the trails were actively use by the public both before and after CDPs were required for development in this area in 1973 and the adoption of the Coastal Act in 1976. Such evidence includes the staff report for CDP 3-81-55-A. It also appears that various mechanisms to inhibit such access were implemented without the necessary CDP.

Nor was the unpermitted fence that existed at the blufftop edge prior to the temporary emergency development legally authorized. Additionally, that unpermitted fence was removed at some point during the course of the recent emergency bluff work. Thus, a fence at this location cannot be considered the baseline condition for the purposes of evaluating the subject CDP application (again, see *LT-WR*). The now proposed fence in the CDP application is required to be evaluated as if there is no fence currently there.

Regarding the bluff armoring component of ECDP No. 201227, the baseline is prior to any emergency work, and no biuff armoring structure existed at this location prior to the emergency work. Thus, any claim that it was a like-kind repair is also patently false for this reason as well. Even if it were a like-kind repair, which it is not, it would nevertheless require a CDP given its location on a coastal bluff (see California Code of Regulations, Title 14, Section 13252, and IP Section 13.20.062). Such development on

<sup>&</sup>lt;sup>3</sup> The regulatory program requiring CDPs was established by voter initiative in 1972 (via Proposition 20) and made permanent by the Legislature in the California Coastal Act of 1976. CDPs were required for development at the subject location beginning on February 1, 1973.

<sup>&</sup>lt;sup>4</sup> The Commission is also tracking a violation related to unpermitted development at this location as well.

coastal bluffs involves a substantial risk of adverse environmental impacts and requires a CDP.

Finally, the proposed project does not qualify for an exemption under Coastal Act Sections 30610(d) or (g) as Mr. Harris claims, including because the scope of the project far exceeds the existing baseline condition. For example, the fence and the 1.4:1 geogrid reinforced fill slope, benches, and drains are entirely new development as described in more detail above. Thus, the subject application is not for repair and maintenance under Coastal Act Section 30610(d), nor is it for a replacement structure destroyed by natural disaster under Coastal Act Section 30610(g).

Contrary to Mr. Harris's claims, a bluff pathway that was used by the public for many years to access Black's Point Beach from Geoffroy Drive<sup>5</sup> was illegally blocked by unpermitted development (including fences, barbed wire, signage, guards, landscaping, etc. – in fact, all *acknowledged* to have been installed by a previous owner) and remains blocked to this day. Both the Commission and the County have been aware of these issues for many years. Further, illegal development cannot be the baseline for the consideration of a CDP application for a new project. While this is true under any circumstance, the consequences of ignoring the law would be especially dire here, where the illegal development blocked public access to the shoreline in violation of the County's LCP, the Coastal Act, and California's Constitution.

We would strongly suggest that the County, the Commission, and Mr. Harris and his clients engage in a thoughtful and meaningful discussion to bring conclusions and resolutions to these longstanding issues in a way that complies with the Coastal Act and LCP, and that time spent toward that end would serve everyone.

Please do not hesitate to contact me if you have any questions or would like to discuss these comments.

Sincerely,

DocuSigned by:

Rainey Graeven

Rainey Graeven
Coastal Planner

Central Coast District

California Coastal Commission

<sup>&</sup>lt;sup>5</sup> See, for example, evidence in the Commission's ongoing prescriptive rights study that demonstrates that the public historically accessed Black's Point Beach at this bluff location.

Attachment: Comment letter dated October 23, 2020

#### cc (sent electronically):

Ira Harris, Applicant's Representative
Deidre Hamilton, Applicant's Representative
Manu Koenig, First District Supervisor
Kathy Molloy, Santa Cruz County Planning Director
Matt Johnston, Santa Cruz County Code Compliance
Jeff Gaffney, Santa Cruz County Parks Director
Linda Hitchcock, California Department of Parks and Recreation

#### CALIFORNIA COASTAL COMMISSION

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October 23, 2020

Nathan MacBeth
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Santa Cruz, CA 95060
Nathan.MacBeth@santacruzcounty.us

Subject: County Coastal Development Permit Application Number 201302 (70 Geoffroy Drive Bluff Retention Project)

Dear Mr. MacBeth:

Thank you for the opportunity to comment on pending Santa Cruz County Coastal Development Permit (CDP) Application Number 201302, under which a private property owner seeks permanent authorization for a temporary emergency bluff retention project installed (pursuant to a County emergency permit) at the blufftop and on the bluff face above Black's Point Beach (i.e., the downcoast portion of Twin Lakes State Beach) at 70 Geoffroy Drive in the Live Oak area of the County. The purpose of this letter is threefold: First, we want to make sure that the County is aware of the range of development that has occurred at and near this location without required CDPs, and the implications of these permitting violations to this proposed project; second, given this violation context as well as the fact that this is a follow-up regular CDP application related to temporary emergency development, we also want to make sure that you are aware of the appropriate baseline for your CDP application review; and third, we provide our observations regarding the Coastal Act and Santa Cruz County Local Coastal Program (LCP) issues raised by the proposal, as well as our recommendations on potential measures necessary to be able to approve a CDP consistent with the Coastal Act and the LCP. We note that these three concerns are intertwined, and we recommend that the project be modified in a way that can address all of the associated issues together. Accordingly, please consider the following:

#### **Existing Baseline for CDP Application Review**

Please note that the Commission continues to maintain open and unresolved enforcement cases related to unpermitted development at this location going back to the mid-1990s, including Violation File Numbers V-3-01-055 and V-3-18-0018. These violations include, but are not limited to, the erection of a fence at the blufftop edge, locked blufftop edge gate, barbed wire, and restrictive signage; the planting of bluff-area vegetation; and the use of security guards, all designed to block and deter public access

<sup>&</sup>lt;sup>1</sup> While V-3-18-0018 was opened to address placement of a vehicular gate across Geoffroy Drive, it references other violations including the blufftop-edge fence, locked blufftop-edge gate, barbed wire, restrictive signage, the planting of bluff-area vegetation, and the use of security guards.

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between Geoffroy Drive and the beach at Black's Point by preventing continued use of pedestrian bluff face pathway to/from the beach.<sup>2</sup> The blufftop and bluff area associated with the proposed project is the same area associated with the violations described, the temporary bluff retention measures (now proposed to be authorized permanently in this CDP application) are in the same bluff area where pedestrians historically accessed the beach, and the now proposed blufftop-edge fence is located in the same area of the previously extant blufftop-edge fence that is a subject of the Commission's violation files.

As a preliminary matter, please note that proposed CDP applications that are intended to authorize prior temporary emergency authorizations, such as the case here, must be evaluated from a baseline that represents the project site before the temporary emergency work was completed. In other words, for purposes of your current CDP application review, and your assessment of the impacts of the proposed project, the "existing" configuration that you must compare to the state that would result from the project is the blufftop and bluff face following the slide that, as we understand it, took out a portion of the slope as well as the blufftop-edge fence. In addition, the "existing" configuration that you have to envision as your baseline must be based on the legally established configuration of the site.4 Given that a fence with a locked gate and barbed wire (located along the fence/gate as well as at the base of the bluff) was installed at the blufftop edge without any CDPs, the legally established configuration similarly omits the fence/gate and barbed wire. It also omits vegetation that was planted without required CDPs to, as we understand it, form a barrier to access along the bluff. In short, the analytic baseline for project review in this case is the configuration preceding the 1990sera violations, and without the more recent temporary emergency work. That analytic baseline "existing" configuration here is a gentle bluff slope from Geoffroy Drive to the beach with a rudimentary beach accessway and with a slope failure at the uppermost portion of the bluff. Please ensure that that is the existing baseline that is applied in this case for CDP application review and decision purposes.

#### Public Recreational Access is sues

As to the now proposed project that needs to be compared to that "existing" baseline under the CDP application, it is clear from the proposed project materials that you provided to us that the project would modify the upper slope of the bluff in a way that

<sup>&</sup>lt;sup>2</sup> Please see the attached violation letters for a further description of these violations.

<sup>&</sup>lt;sup>3</sup> And note that that removal of the fence helps address the violation associated with the fence from the 1990s, and there is nothing we have seen that would suggest that the fence could be installed again without benefit of a CDP, as has apparently already happened in this case (and which offense has been added to Violation File Number V-3-18-0018).

<sup>&</sup>lt;sup>4</sup> In other words, CDP applicants cannot use unpermitted activities to modify the baseline for CDP evaluation. For example, if an applicant acts without the legally required authorizations, including required CDPs, to remove all vegetation that would constitute ESHA on a site, and then proposes a house on that site, the "existing" configuration for CDP evaluation is not the denuded non-ESHA site, rather it is the site as it existing before the unpermitted vegetation removal. While that example speaks to ESHA, the same principles apply here. See, e.g., LT-WR, L.L.C. v. California Coastal Commission (2007), 152 Cal.App.4<sup>th</sup> 770, 797.

# County CDP Application 201302 70 Geoffroy Drive Bluff Retention Project Page 3 of 7

would prevent use of the rudimentary accessway to the beach, and it includes a new fence along the blufftop edge that would also block access to that slope area in any case. We do not believe that such a project can be found Coastal Act<sup>5</sup> or LCP consistent with respect to public recreational access. In terms of the Coastal Act. Section 30210 requires that public recreational access opportunities be maximized. while respecting the rights of private property owners.<sup>6</sup> Section 30211 prohibits development from interfering with the public's right of access to the sea (such as access to the beach here) if such rights were acquired through historical use. In approving new development, Section 30212 requires new development to provide access from the nearest public roadway (here Geoffroy Drive downcoast of the site) to the shoreline and along the coast (here to Black's Point Beach), save certain limited exceptions, such as when adequate access already exists (not the case from Geoffroy Drive to the beach). Section 30213 speaks to ensuring that free and low-cost options, such as the beach accessway in question here, are available to coastal visitors. And Sections 30220 through 30223 protect coastal areas suited for water-oriented activities, oceanfront land suitable for recreational use, and upland areas needed to support recreational uses, all of which are applicable in this case.

Similarly, the County's LCP also protects public recreational access including requiring maximized public use and enjoyment of coastal recreational resources, provision of shoreline and beach access to serve the public and coastal neighborhoods, encouraging access and connections between parks, and visual shoreline access (see, for example, LCP Land Use Plan (LUP) Objectives 7.7 a, b, and c, and LUP Policies 7.7.1, 7.7.6, 7.7.9, 7.7.10, and 7.7.11, Chapter 7 Land Use Programs a and b, and LUP Policies 7.7.18 and 7.7.19). Further, the LCP includes required CDP findings, and these include requiring that the project conform with the LUP's public access, recreation, and visitor-serving policies, that the project meets all other LCP provisions, and that project conform to the Chapter 3 policies of the Coastal Act (see LCP Implementation Plan (IP) Section 13.20.110). The LCP also has exacting design criteria for development proposed in scenic areas such as this (requiring visual compatibility, minimized disturbance, etc. – see IP Section 13.20.130), and any project here will need to address those requirements.<sup>7</sup>

<sup>&</sup>lt;sup>5</sup> The proposed project is located seaward of the first public road and the sea, and thus it must be found consistent with all LCP policies as well as the Coastal Act's public recreational access provisions (pursuant to Coastal Act Section 30604(c)).

<sup>&</sup>lt;sup>6</sup> The Coastal Act Section 30210 direction to maximize public recreational access opportunities represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect: it is not enough to simply *provide* access to and along the coast, and not enough to simply *protect* access, rather such access must also be *maximized*. This terminology distinguishes the Coastal Act in certain respects, and it provides fundamental direction with respect to projects along the California coast that raise public recreational access issues, like this one.

<sup>&</sup>lt;sup>7</sup> Note, for example, that for beach viewsheds such as this, Section 13.20.130 explicitly requires that: "Development shall be sited and designed to fit the physical setting carefully so that its presence is subordinate to the natural character of the site, including through appropriately maintaining natural features (e.g., streams, riparian corridors, major drainages, mature trees, dominant vegetative communities, rock outcroppings, prominent natural landforms, tree groupings, etc.) and requiring

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The project as proposed simply does not meet any of these Coastal Act or LCP tests. In place of maximizing public recreational access opportunities compared to the existing baseline, it would essentially block and preclude any form of access here. Further, the LCP explicitly directs that LCP-designated neighborhood public accessways (where the rudimentary accessway in question in this application is *explicitly so designated* by LUP Policy 7.7.18) be improved, including via path improvements and enhanced maintenance, and further the LCP explicitly calls for an overlook/vista point to be developed with benches and railings *at this location* (LUP Program 7.7(c)). In place of these LCP-required provisions (none of which are addressed/provided for by the proposed project), the proposed project would block and otherwise prevent public access here. Accordingly, we do not believe that the proposed project can be found consistent with the Coastal Act or the LCP on these points.

#### Shoreline Armoring Issues

Pursuant to the LCP, a "shoreline protection structure" is defined as "any structure or material, including but not limited to riprap or a seawall, placed in an area where coastal processes operate" (IP Section 16.10.040(3g)). The proposed slope repair includes a 1.4:1 geogrid reinforced fill slope, a 2-foot keyway into the Purisima formation covered with a North American green erosion control blanket along a coastal bluff above the sandy beach where coastal processes operate, and thus constitutes a shoreline protection structure. Per the LCP, such shoreline protection structures are only allowed "where necessary to protect existing structures from a significant threat" (see LUP Policy 6.2.16 and IP Section 16.10.070(h)(3)). Such structural protection is only allowable when non-structural measures are infeasible, and when such protection does not reduce public beach access, adversely affect shoreline processes and sand supply, adversely impact recreational resources, or negatively impact habitat. On the whole, these LCP policies recognize that shoreline protection structures have negative coastal resource impacts and are to be utilized sparingly – and only when it can be demonstrated that such measures are warranted and appropriately mitigated, as directed by the LCP.

Here, it is not clear that the proposed project can meet any of these LCP tests either. First, the existing structure being protected is ostensibly the driveway area above the rudimentary trail area, and the "significant threat" is presumably the recent slope failure. However, it is not clear from the project materials that that driveway area would constitute an "existing structure" for shoreline protection structure purposes including because it appears to have been completely redone and replaced since 1977, nor is it clear that the slope failure constitutes a significant threat to it. Further, as a portion of a larger driveway area, it appears that there are likely alternative measures available to address such a threat, should it be conclusively demonstrated, absent the introduction of shoreline protection structures, including via non-structural measures (e.g., realigned pavement area), such as those that might allow for the slope to lay back further naturally, in a way that the failure seems to suggest. Even if the proposed project were

appropriate setbacks therefrom. Screening and landscaping suitable to the site shall be used to soften the visual impact of development unavoidably sited in the public viewshed."

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to meet that portion of the LCP's tests, based on evidence which staff is currently aware of it cannot meet the requirement that it not reduce public beach access or adversely impact recreational resources, including as described in the discussion above. On the contrary, as proposed the project would effectively eliminate any potential for such beach access, and adversely impact recreational utility, at this location, the proposed project would be inconsistent with the LCP on these points. Finally, the effect of the shoreline protection structure on shoreline processes and sand supply have not been documented in the project materials provided. That said, it is our experience that almost all shoreline protection structures, such as the bluff retention structure proposed in this case, lead to discernable and quantifiable impacts on shoreline sand supply and related processes, ultimately helping to contribute to a loss of beaches.

In short, it is not clear that the proposed project can meet all applicable LCP armoring tests required for approval. What *is* clear is that it cannot meet certain LCP armoring tests related to protection of public access, recreation, and the shoreline. Thus, the proposed project cannot be found consistent with the LCP on these points either.

#### **CCC Staff Preliminary Recommendation**

We believe that the most efficient way of addressing the issues described would be to ensure that the bluff retention structure and related development is approved in such a way that it also accommodates public access to the beach. Given that the existing condition for purposes of CDP application review is treated as being the presence of a rudimentary access trail, at a minimum, the project needs to provide for same. And if subsequent materials demonstrate that the shoreline protection structure itself proposed to be retained in this application leads to its own coastal resource impacts, as expected. then we recommend that required mitigation to offset such impacts be applied in a way that can enhance the historical rudimentary beach accessway, including as directed by the LCP. As to the LCP-required overlook, it would seem that any requirements thereto are probably best applied to improvements to the accessway itself (e.g., installing at least rudimentary steps along the bluff, if not a low-key stairway that hugs the bluff, etc.), although we are also open to the LCP-described overlook improvements at this location. If fencing is considered, we strongly recommend that only the minimum amount of such fencing as may be required for public safety purposes be allowed at the blufftop edge, and that there be a sufficient opening in it to allow users easy access to the accessway itself. We do not see any compelling Coastal Act or LCP reason for barbed wire, and we believe that it is actually inconsistent with public viewshed and public recreational access provisions, and thus we recommend that it be removed from the project. All signage and any other related development (e.g., drainage components, landscaping to help camouflage the retaining structure and any drainage, etc.) needs to be sited and designed in such a way as to not frustrate the public's ability to access and use the accessway improvements. And finally, all development needs to recognize that it is proposed in a scenic area adjacent to the beach, and all such development must be sensitive to the aesthetics of that setting, including through minimizing visibility and making use of neutral/natural materials and colors as much as possible.

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In short, we believe that the Coastal Act and LCP require modifications to the proposed project to find it consistent with applicable provisions. And we also believe that some fairly minor modifications, including as suggested above, can correct not only the Coastal Act and LCP inconsistencies with the project as proposed, but that these modifications can also serve to resolve longstanding violations associated with this site. On the latter point, please note that the LCP also *requires* that such violations be resolved (and indeed affected coastal resources enhanced) as part of proposed CDP applications (see IP Section 13.20.170),<sup>8</sup> and these types of modifications would also allow for an application to be approved at all in relation to such violations (and conversely, if the violations are not resolved, then Section 13.20.170 does not actually allow for such approval, and denial is required).

Finally, as I am sure you are aware, this site is the subject of significant public interest, particularly related to past violations that have blocked beach access here. We strongly recommend that the County provide the widest possible notice for all hearings on this CDP application, including so that all nearby residents and property owners are made aware, but also so that the broader community is also made aware and can readily participate. To the latter point, we suggest that prominent, accurate (e.g., in terms of what is considered existing versus proposed, as described above; that County CDP action here would be appealable to the Commission; etc.), and descriptive notices be erected where Black's Point Beach and Sunny Cove Beach users can easily see them, in addition to posting at and near the site (e.g., at the base of the bluff, and the public Geoffroy Drive street end). In other words, we would suggest doing everything possible to maximize the public's ability to participate in all proceedings regarding this matter.

Again, thank you for your invitation to provide comments on the proposed CDP application for this project. As described, the project raises a series of significant and substantial coastal resource issues that will require careful consideration, as well as project modifications, to allow for a CDP to be approved consistent with the Coastal Act and the LCP. And, as described, if the proposed project is not so modified, we do not believe that it can be found consistent with these applicable provisions, including because if the CDP violations are not resolved then the LCP requires that the project be denied. Fortunately, we believe that even fairly modest changes can readily address the coastal resource concerns at this location, and we look forward to working with you, the applicant, the community, and interested parties to come to a beneficial resolution through this CDP application. Please do not hesitate to contact me if you have any questions or would like to further discuss these comments.

<sup>&</sup>lt;sup>8</sup> Section 13.20.170 states in operable part: "Development that is proposed for property on which there are existing unresolved coastal development permit violations shall only be approved and allowed if: (1) the approval resolves all such violations through its terms and conditions and (2) such resolution protects and enhances coastal resources, including that it results in a coastal resource condition that is as good or better than existed prior to the violations; or (3) the proposed development is necessary to ensure health and safety, in which case the approval for the development shall specify that an application to resolve the unresolved coastal development permit violation(s) shall be made within 90 days of the approval."

# **County CDP Application 201302** 70 Geoffroy Drive Bluff Retention Project Page 7 of 7

Sincerely,

-DocuSigned by:

Rainey Graeven

Rainey Graeven

Coastal Planner

Central Coast District

California Coastal Commission

Attachments: Letters from California Coastal Commission Enforcement Staff to County staff and the Geoffroy Drives Homeowners Association dated April 18, 2018, May 4, 2018, June 1, 2018, and June 29, 2018.

#### cc (sent electronically):

Deidre Hamilton, Applicant's Representative John Leopold, First District Supervisor Kathy Molloy, Santa Cruz County Planning Director Matt Johnston, Santa Cruz County Code Compliance Jeff Gaffney, Santa Cruz County Parks Director Sheila Branon, California Department of Parks and Recreation

#### **Nathan MacBeth**

From: Tisa Murdock <tisa.murdock@gmail.com>

Sent: Tuesday, October 11, 2022 6:32 PM

To: Nathan MacBeth; twiggins1939@gmail.com; elijahmowbray@gmail.com

Subject: Re: How to submit documentation for Oct 21 Zoning planning meeting

Attachments: Additional Comments on Application 201302 (Geoffroy Bluff Retention Structure) &

Attachment 5.21.21 (2).pdf

\*\*\*\*CAUTION:This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.\*\*\*\*

Thank you Nathan,

Attached are two documents making it very obvious why there should not be a final permit issued to the homeowners on Geoffrey Dr. This section of the letter dated May 21, 2021 is particularly of interest... Starting on page #2.

Although there were some discussions surrounding access between Geoffroy Drive and Black's Point Beach in that case, the court's decision addresses only whether the Commission can revisit the validity of the County's CDP determinations for that vehicular gate. The court made no determination as to the level or type of historical public access along the bluff. On the contrary, the court's order affected a different area on a different property altogether.

Moreover, any development that proceeded without the requisite Coastal Act/LCP authorization constitutes a Coastal Act/LCP violation, regardless of whether it blocks an accessway over which the public has established rights.

Over the course of the court fillings for the litigation surrounding the vehicular gate, Eugene Shklar, a previous owner of 70 Geoffroy Drive, acknowledged that he is

responsible for some of the violations that are the subject of open Commission violations V-3-01-055 and V-3-18-0018. Mr. Shklar's declaration indicates that he

himself "chose to permanently close off the access" from Geoffroy Drive to Blacks Point Beach in 2001. Mr. Shklar details his actions as follows: he installed barbed wire atop the blufftop fence; constructed a wooden fence at the base of the bluff, also with barbed wire; posted five signs throughout the area that conveyed various messages, including "no trespassing/private property," "do not enter," and "no beach access;" hired a uniformed security guard; and then let thorny blackberry vines and other vegetation grow in until they completely obscured the former pathway.

In addition to Mr. Shklar's admission of responsibility for components of the unpermitted development at issue in V-3-01-055 and V-3-18-0018, members of the public have also conveyed similar accounts of efforts to restrict access (including the use of signage, vegetation, barbed wire, fencing, and security guards) specifically to deter access along trails that connected Geoffroy Drive to Black's Point Beach. On this point, there is an ongoing prescriptive rights study being conducted to determine the historical level and type of public access that may have existed between Geoffroy Drive and Black's Point Beach prior to the unpermitted blockage of that accessway. In short, and contrary to Mr. Harris's assertions, the question of the level and type of public access and associated rights as it relates to the subject bluff area remain unanswered, and efforts to address such questions are ongoing. It is simply inaccurate to cite the court's ruling as evidence to the contrary. And again, the violation allegations are based on the evidence of unpermitted development, which is a violation regardless of the level of historic use.

Mr. Harris's claim that "any action on said 'alleged' violation ... would be time barred" is similarly both incorrect and irrelevant to the issue before the County. The courts have made it clear that, independent of the viability of any judicial action, it is appropriate for a body reviewing a CDP application to view the baseline for that application as if any unpermitted development had not occurred (see LT-WR, L.L.C. v. California Coastal Commission (2007) 152 Cal.App.4th 770, 797). Even if the statute of limitations were relevant, Mr. Harris cites inapplicable statutory provisions from the Code of Civil Procedure. There is no limitation on the Commission's ability to issue an administrative order or to file for injunctive relief, and even administrative penalties can be imposed many years after the initiation of a violation if the violation is ongoing. These principles were recently reaffirmed by the California Court of Appeals in Lent v. California CoastalCommission (April 5, 2021, modified April 16, 2021, 2nd DCA, B292091), where the court, just last month, upheld the Commission's issuance of both a cease and desist order and a penalty in response to an access blockage that had been in place for decades, much like here.

This makes it abundantly clear by the owners own admission that he illegally closed off a rightful public beach access denying citizens of Santa Cruz County access to Blacks Beach from Geoffrey Dr.

Thank you, Tisa Murdock Exhibit 3 A-3-SCO-23-0003 Page 244 of 311 831-818-6095

On Tue, Oct 11, 2022 at 10:08 AM Nathan MacBeth < Nathan.MacBeth@santacruzcounty.us > wrote:

Tisa,

Feel free to forward any comments/documents regarding this item to me for distribution to the Zoning Administrator.

Thank you,





From: Tisa Murdock < tisa.murdock@gmail.com > Sent: Tuesday, October 11, 2022 11:01 AM

To: Nathan MacBeth < Nathan. MacBeth@santacruzcounty.us >; twiggins1939@gmail.com; elijahmowbray@gmail.com

Subject: How to submit documentation for Oct 21 Zoning planning meeting

\*\*\*\*CAUTION: This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

Hi Nathan – I found the zoning meeting info and agenda <u>here</u>. However I do not see how I can submit documentation online.

Specifically I wanted to attach the coastal commission report showing how Blacks Beach coastal beach access from Geoffrey Drive is part of the coastline trail and is listed on county records as **public beach access**. This access point was

closed by a neighbor by boarding up the access to the stairs and then hiring an armed guard and building a fence with barbed wire on top. This sets a horrible precedent to new people moving to Santa Cruz and assuming our rules, our zoning and our protected public beach access, ensuring all can enjoy our community - simply do not apply to them.

Regarding your comment about how someone's (in the now gated area of Geoffrey's) house was the target of arson is horrible but that argument does not hold as it could happen to any one of us in Santa Cruz and a gate will not stop this behavior. This also assumes that the people who would access the beach from this public access are somewhat prone to criminal behavior. We just want safe access to the beach and it should not matter how much money you have.

The neighbors must make a pedestrian access way available through their gate. There should be one set of rules for all. They should be denied the permit and remove the chain link fence they put up as part of the "temporary" permit fix and we should restore our public access to what was there before a few neighbors decided they could randomly close access to Blacks Beach.

Thank you,

Tisa Murdock

831-818-6095

# CALIFORNIA COASTAL COMMISSION

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



May 21, 2021

Sent Electronically
Sheila.McDaniel@santacruzcounty.us
Sheila McDaniel
Santa Cruz County Planning Department
701 Ocean Street, 4<sup>th</sup> Floor
Santa Cruz, CA 95060

Subject: County Coastal Development Permit Application Number 201302 (70 Geoffroy Drive Bluff Armoring Project)

Dear Ms. McDaniel:

The purpose of this letter is to respond to Ira Harris's letter dated October 29, 2020, regarding pending Santa Cruz County Coastal Development Permit (CDP) Application No. 201302, which seeks permanent authorization for temporary emergency bluff armoring and drainage project (installed pursuant to a County emergency CDP) at the blufftop and on the bluff face above Black's Point Beach (i.e., the downcoast portion of Twin Lakes State Beach) at the upcoast end of Geoffroy Drive in the Live Oak area of the County. Specifically, we would like to respond to Mr. Harris's assertions related to the Coastal Commission's open violation cases, as well as his assertions that there are no public recreational access issues here and that the subject application represents a "like-kind repair." We would also like to respond to his mischaracterizations of the pending litigation and the law. In summary, we do not agree with Mr. Harris's assertions, do not find his reasoning sound, and do not believe that his comments are on-point or helpful to the process.

We stand by our previous comments regarding the baseline condition against which the subject CDP should be evaluated, and issues related to the subject application's consistency with both the Coastal Act and the LCP (see attached letter dated October 23, 2020). The comments in this letter are simply intended to respond to assertions made by Mr. Harris. Accordingly, please consider the following:

#### Coastal Commission Violation Cases V-3-01-055 and V-3-18-0018

First, contrary to Mr. Harris's assertions, there are open and unresolved Coastal Commission enforcement cases related to unpermitted development at this location. Those open violations are separate from ongoing litigation related to a vehicular gate constructed along Geoffroy Drive in 2017. Commission Enforcement Case Numbers V-3-01-055 and V-3-18-0018 are thus unrelated to the litigation. Those violations date

<sup>&</sup>lt;sup>1</sup> While V-3-18-0018 includes the placement of the vehicular gate across Geoffroy Drive, it also describes other violations (including the blufftop-edge fence, locked blufftop-edge gate, barbed wire, restrictive signage, the planting of bluff-area vegetation, and the use of security guards).

back to the mid-1990s, and involve development designed to prevent public use of a historic pedestrian bluff face pathway to/from Geoffroy Drive and Black's Point Beach.<sup>2</sup> They include but are not limited to the erection of a fence at the blufftop edge, a locked blufftop edge gate, barbed wire, and restrictive signage; the planting of bluff-area vegetation; and the use of security guards. The blufftop and bluff area associated with the proposed project is the same area associated with the violations described; the temporary bluff armoring and drainage measures (now proposed to be authorized permanently in this CDP application) are in the same bluff area where pedestrians historically accessed the beach; and the now-proposed blufftop-edge fence is located in the same area of the previously extant and unpermitted blufftop-edge fence, which is a subject of the Commission's enforcement cases.

Mr. Harris contends that the alleged baseline lacks factual support; that the barbed wire and restrictive signage have existed for decades; that these issues were resolved in the recent litigation related to the vehicular gate; and that there are no outstanding public access issues or questions at this site.

Regarding Mr. Harris's contentions that the Commission's identified baseline lacks factual support and that the issue of historical access by the public at this bluff location has already been decided by the recent litigation related to the vehicular gate, we would reiterate that the Commission's Enforcement Case Numbers V-3-01-055 and V-3-18-0018 are existing, open, and unresolved violations of the Coastal Act and the LCP. In addition, the litigation concerns a vehicular gate that was constructed across Geoffroy Drive about 125 feet downcoast of the bluff area in question. Although there were some discussions surrounding access between Geoffroy Drive and Black's Point Beach in that case, the court's decision addresses only whether the Commission can revisit the validity of the County's CDP determinations for that vehicular gate. The court made no determination as to the level or type of historical public access along the bluff. On the contrary, the court's order affected a different area on a different property altogether. Moreover, any development that proceeded without the requisite Coastal Act/LCP authorization constitutes a Coastal Act/LCP violation, regardless of whether it blocks an accessway over which the public has established rights.

Over the course of the court filings for the litigation surrounding the vehicular gate, Eugene Shklar, a previous owner of 70 Geoffroy Drive, acknowledged that he is responsible for some of the violations that are the subject of open Commission violations V-3-01-055 and V-3-18-0018. Mr. Shklar's declaration indicates that he himself "chose to permanently close off the access" from Geoffroy Drive to Blacks Point Beach in 2001. Mr. Shklar details his actions as follows: he installed barbed wire atop the blufftop fence; constructed a wooden fence at the base of the bluff, also with barbed wire; posted five signs throughout the area that conveyed various messages, including "no trespassing/private property," "do not enter," and "no beach access;" hired a

<sup>&</sup>lt;sup>2</sup> Please see letters dated April 11, 2016, May 4, 2018, June 1, 2018, and June 28, 2018, previously provided to you, for a further description of these violations.

uniformed security guard; and then let thorny blackberry vines and other vegetation grow in until they completely obscured the former pathway.

In addition to Mr. Shklar's admission of responsibility for components of the unpermitted development at issue in V-3-01-055 and V-3-18-0018, members of the public have also conveyed similar accounts of efforts to restrict access (including the use of signage, vegetation, barbed wire, fencing, and security guards) specifically to deter access along trails that connected Geoffroy Drive to Black's Point Beach. On this point, there is an ongoing prescriptive rights study being conducted to determine the historical level and type of public access that may have existed between Geoffroy Drive and Black's Point Beach prior to the unpermitted blockage of that accessway. In short, and contrary to Mr. Harris's assertions, the question of the level and type of public access and associated rights as it relates to the subject bluff area remain unanswered, and efforts to address such questions are ongoing. It is simply inaccurate to cite the court's ruling as evidence to the contrary. And again, the violation allegations are based on the evidence of unpermitted development, which is a violation regardless of the level of historic use.

Mr. Harris's claim that "any action on said 'alleged' violation ... would be time barred" is similarly both incorrect and irrelevant to the issue before the County. The courts have made it clear that, independent of the viability of any judicial action, it is appropriate for a body reviewing a CDP application to view the baseline for that application as if any unpermitted development had not occurred (see *LT-WR*, *L.L.C. v. California Coastal Commission* (2007) 152 Cal.App.4<sup>th</sup> 770, 797). Even if the statute of limitations were relevant, Mr. Harris cites inapplicable statutory provisions from the Code of Civil Procedure. There is no limitation on the Commission's ability to issue an administrative order or to file for injunctive relief, and even administrative penalties can be imposed many years after the initiation of a violation if the violation is ongoing. These principles were recently reaffirmed by the California Court of Appeals in *Lent v. California Coastal Commission* (April 5, 2021, modified April 16, 2021, 2<sup>nd</sup> DCA, B292091), where the court, just last month, upheld the Commission's issuance of both a cease and desist order and a penalty in response to an access blockage that had been in place for decades, much like here.

Mr. Harris contends that the subject application, County CDP Application Number 201302, is a "like-kind repair," and asserts that no CDP is required for such work.

County CDP Application No. 201302 is not a "like-kind emergency repair" or a "restoration of the private driveway atop the bluff," as Mr. Harris claims. Although Application No. 201302 is the LCP-required follow-up CDP application to County-issued Emergency CDP (ECDP) No. 201227, and the scope of work appears to include road and storm drain improvements atop the bluff similar to what was there before, the emergency work also went well beyond a "like-kind repair." Specifically, the current project includes the 1.4:1 geogrid reinforced fill slope keyed into the Purisima formation with significant slope benches and subdrains that represents new shoreline armoring on the bluff under the LCP, and it is not at all like what was present before. In addition, the current project also includes placement of a roughly four-foot-tall black chain-link fence

at the blufftop edge. Although a fence did exist along the blufftop edge roughly at the location of the fence that was constructed under ECDP No. 201227, a fence at this location has never been authorized by a CDP in the nearly 50 years since CDPs³ were first required for "the placement of any solid material or structure" (see Coastal Act Section 30106 and Implementation Plan (IP) Section 13.20.040 of the County's Local Coastal Program (LCP)). Replacement of unauthorized and illegal development cannot constitute a "like-kind repair."

In fact, based on our records, including statements by members of the public, it appears that various fences/gates have been erected, removed, and replaced at this location without CDP authorization since February 1, 1973 (and accordingly are a component of open Coastal Commission Enforcement Case Numbers V-3-01-055 and V-3-18-0018). And contrary to Mr. Harris's assertions, the staff report for Commission CDP 3-81-55-A in 1986 (applicable to residential development at 60 Geoffroy Drive, just upcoast of the current CDP application site) indicates that there were multiple trails that provided through public access from Geoffroy Drive to Black's Point Beach in the general bluff area in question at the end of Geoffroy Drive, including both the trail where the emergency development was installed and a trail slightly further upcoast near 60 Geoffroy Drive. The 1986 staff report indicates that erosion and the construction of a wooden fence sometime after 1985 blocked the public's access to the trail near 60 Geoffroy,4 and that the installation of a barbed wire fence blocked the public's access to the other trail (i.e., the trail that was in the ECDP area). Notably, there is evidence to suggest that the trails were actively use by the public both before and after CDPs were required for development in this area in 1973 and the adoption of the Coastal Act in 1976. Such evidence includes the staff report for CDP 3-81-55-A. It also appears that various mechanisms to inhibit such access were implemented without the necessary CDP.

Nor was the unpermitted fence that existed at the blufftop edge prior to the temporary emergency development legally authorized. Additionally, that unpermitted fence was removed at some point during the course of the recent emergency bluff work. Thus, a fence at this location cannot be considered the baseline condition for the purposes of evaluating the subject CDP application (again, see *LT-WR*). The now proposed fence in the CDP application is required to be evaluated as if there is no fence currently there.

Regarding the bluff armoring component of ECDP No. 201227, the baseline is prior to any emergency work, and no bluff armoring structure existed at this location prior to the emergency work. Thus, any claim that it was a like-kind repair is also patently false for this reason as well. Even if it were a like-kind repair, which it is not, it would nevertheless require a CDP given its location on a coastal bluff (see California Code of Regulations, Title 14, Section 13252, and IP Section 13.20.062). Such development on

<sup>&</sup>lt;sup>3</sup> The regulatory program requiring CDPs was established by voter initiative in 1972 (via Proposition 20) and made permanent by the Legislature in the California Coastal Act of 1976. CDPs were required for development at the subject location beginning on February 1, 1973.

<sup>&</sup>lt;sup>4</sup> The Commission is also tracking a violation related to unpermitted development at this location as well.

coastal bluffs involves a substantial risk of adverse environmental impacts and requires a CDP.

Finally, the proposed project does not qualify for an exemption under Coastal Act Sections 30610(d) or (g) as Mr. Harris claims, including because the scope of the project far exceeds the existing baseline condition. For example, the fence and the 1.4:1 geogrid reinforced fill slope, benches, and drains are entirely new development as described in more detail above. Thus, the subject application is not for repair and maintenance under Coastal Act Section 30610(d), nor is it for a replacement structure destroyed by natural disaster under Coastal Act Section 30610(g).

Contrary to Mr. Harris's claims, a bluff pathway that was used by the public for many years to access Black's Point Beach from Geoffroy Drive<sup>5</sup> was illegally blocked by unpermitted development (including fences, barbed wire, signage, guards, landscaping, etc. – in fact, all *acknowledged* to have been installed by a previous owner) and remains blocked to this day. Both the Commission and the County have been aware of these issues for many years. Further, illegal development cannot be the baseline for the consideration of a CDP application for a new project. While this is true under any circumstance, the consequences of ignoring the law would be especially dire here, where the illegal development blocked public access to the shoreline in violation of the County's LCP, the Coastal Act, and California's Constitution.

We would strongly suggest that the County, the Commission, and Mr. Harris and his clients engage in a thoughtful and meaningful discussion to bring conclusions and resolutions to these longstanding issues in a way that complies with the Coastal Act and LCP, and that time spent toward that end would serve everyone.

Please do not hesitate to contact me if you have any questions or would like to discuss these comments.

Sincerely.

- DocuSigned by:

Rainey Graeven

- AFF4284CFEB54FA

Rainey Graeven

Coastal Planner

Central Coast District

California Coastal Commission

<sup>&</sup>lt;sup>5</sup> See, for example, evidence in the Commission's ongoing prescriptive rights study that demonstrates that the public historically accessed Black's Point Beach at this bluff location.

Attachment: Comment letter dated October 23, 2020

# cc (sent electronically):

Ira Harris, Applicant's Representative
Deidre Hamilton, Applicant's Representative
Manu Koenig, First District Supervisor
Kathy Molloy, Santa Cruz County Planning Director
Matt Johnston, Santa Cruz County Code Compliance
Jeff Gaffney, Santa Cruz County Parks Director
Linda Hitchcock, California Department of Parks and Recreation

#### CALIFORNIA COASTAL COMMISSION

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



October 23, 2020

Nathan MacBeth
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060
Nathan.MacBeth@santacruzcounty.us

Subject: County Coastal Development Permit Application Number 201302 (70 Geoffroy Drive Bluff Retention Project)

Dear Mr. MacBeth:

Thank you for the opportunity to comment on pending Santa Cruz County Coastal Development Permit (CDP) Application Number 201302, under which a private property owner seeks permanent authorization for a temporary emergency bluff retention project installed (pursuant to a County emergency permit) at the blufftop and on the bluff face above Black's Point Beach (i.e., the downcoast portion of Twin Lakes State Beach) at 70 Geoffroy Drive in the Live Oak area of the County. The purpose of this letter is threefold: First, we want to make sure that the County is aware of the range of development that has occurred at and near this location without required CDPs, and the implications of these permitting violations to this proposed project; second, given this violation context as well as the fact that this is a follow-up regular CDP application related to temporary emergency development, we also want to make sure that you are aware of the appropriate baseline for your CDP application review; and third, we provide our observations regarding the Coastal Act and Santa Cruz County Local Coastal Program (LCP) issues raised by the proposal, as well as our recommendations on potential measures necessary to be able to approve a CDP consistent with the Coastal Act and the LCP. We note that these three concerns are intertwined, and we recommend that the project be modified in a way that can address all of the associated issues together. Accordingly, please consider the following:

#### Existing Baseline for CDP Application Review

Please note that the Commission continues to maintain open and unresolved enforcement cases related to unpermitted development at this location going back to the mid-1990s, including Violation File Numbers V-3-01-055 and V-3-18-0018. These violations include, but are not limited to, the erection of a fence at the blufftop edge, locked blufftop edge gate, barbed wire, and restrictive signage; the planting of bluff-area vegetation; and the use of security guards, all designed to block and deter public access

<sup>&</sup>lt;sup>1</sup> While V-3-18-0018 was opened to address placement of a vehicular gate across Geoffroy Drive, it references other violations including the blufftop-edge fence, locked blufftop-edge gate, barbed wire, restrictive signage, the planting of bluff-area vegetation, and the use of security guards.

# County CDP Application 201302 70 Geoffroy Drive Bluff Retention Project Page 2 of 7

between Geoffroy Drive and the beach at Black's Point by preventing continued use of pedestrian bluff face pathway to/from the beach.<sup>2</sup> The blufftop and bluff area associated with the proposed project is the same area associated with the violations described, the temporary bluff retention measures (now proposed to be authorized permanently in this CDP application) are in the same bluff area where pedestrians historically accessed the beach, and the now proposed blufftop-edge fence is located in the same area of the previously extant blufftop-edge fence that is a subject of the Commission's violation files.

As a preliminary matter, please note that proposed CDP applications that are intended to authorize prior temporary emergency authorizations, such as the case here, must be evaluated from a baseline that represents the project site before the temporary emergency work was completed. In other words, for purposes of your current CDP application review, and your assessment of the impacts of the proposed project, the "existing" configuration that you must compare to the state that would result from the project is the blufftop and bluff face following the slide that, as we understand it, took out a portion of the slope as well as the blufftop-edge fence.<sup>3</sup> In addition, the "existing" configuration that you have to envision as your baseline must be based on the legally established configuration of the site.4 Given that a fence with a locked gate and barbed wire (located along the fence/gate as well as at the base of the bluff) was installed at the blufftop edge without any CDPs, the legally established configuration similarly omits the fence/gate and barbed wire. It also omits vegetation that was planted without required CDPs to, as we understand it, form a barrier to access along the bluff. In short, the analytic baseline for project review in this case is the configuration preceding the 1990sera violations, and without the more recent temporary emergency work. That analytic baseline "existing" configuration here is a gentle bluff slope from Geoffroy Drive to the beach with a rudimentary beach accessway and with a slope failure at the uppermost portion of the bluff. Please ensure that that is the existing baseline that is applied in this case for CDP application review and decision purposes.

#### **Public Recreational Access Issues**

As to the now proposed project that needs to be compared to that "existing" baseline under the CDP application, it is clear from the proposed project materials that you provided to us that the project would modify the upper slope of the bluff in a way that

<sup>&</sup>lt;sup>2</sup> Please see the attached violation letters for a further description of these violations.

<sup>&</sup>lt;sup>3</sup> And note that that removal of the fence helps address the violation associated with the fence from the 1990s, and there is nothing we have seen that would suggest that the fence could be installed again without benefit of a CDP, as has apparently already happened in this case (and which offense has been added to Violation File Number V-3-18-0018).

<sup>&</sup>lt;sup>4</sup> In other words, CDP applicants cannot use unpermitted activities to modify the baseline for CDP evaluation. For example, if an applicant acts without the legally required authorizations, including required CDPs, to remove all vegetation that would constitute ESHA on a site, and then proposes a house on that site, the "existing" configuration for CDP evaluation is not the denuded non-ESHA site, rather it is the site as it existing before the unpermitted vegetation removal. While that example speaks to ESHA, the same principles apply here. See, e.g., LT-WR, L.L.C. v. California Coastal Commission (2007), 152 Cal.App.4<sup>th</sup> 770, 797.

# County CDP Application 201302 70 Geoffroy Drive Bluff Retention Project Page 3 of 7

would prevent use of the rudimentary accessway to the beach, and it includes a new fence along the blufftop edge that would also block access to that slope area in any case. We do not believe that such a project can be found Coastal Act<sup>5</sup> or LCP consistent with respect to public recreational access. In terms of the Coastal Act, Section 30210 requires that public recreational access opportunities be maximized, while respecting the rights of private property owners. 6 Section 30211 prohibits development from interfering with the public's right of access to the sea (such as access to the beach here) if such rights were acquired through historical use. In approving new development. Section 30212 requires new development to provide access from the nearest public roadway (here Geoffroy Drive downcoast of the site) to the shoreline and along the coast (here to Black's Point Beach), save certain limited exceptions, such as when adequate access already exists (not the case from Geoffroy Drive to the beach). Section 30213 speaks to ensuring that free and low-cost options, such as the beach accessway in question here, are available to coastal visitors. And Sections 30220 through 30223 protect coastal areas suited for water-oriented activities, oceanfront land suitable for recreational use, and upland areas needed to support recreational uses, all of which are applicable in this case.

Similarly, the County's LCP also protects public recreational access including requiring maximized public use and enjoyment of coastal recreational resources, provision of shoreline and beach access to serve the public and coastal neighborhoods, encouraging access and connections between parks, and visual shoreline access (see, for example, LCP Land Use Plan (LUP) Objectives 7.7 a, b, and c, and LUP Policies 7.7.1, 7.7.6, 7.7.9, 7.7.10, and 7.7.11, Chapter 7 Land Use Programs a and b, and LUP Policies 7.7.18 and 7.7.19). Further, the LCP includes required CDP findings, and these include requiring that the project conform with the LUP's public access, recreation, and visitor-serving policies, that the project meets all other LCP provisions, and that project conform to the Chapter 3 policies of the Coastal Act (see LCP Implementation Plan (IP) Section 13.20.110). The LCP also has exacting design criteria for development proposed in scenic areas such as this (requiring visual compatibility, minimized disturbance, etc. – see IP Section 13.20.130), and any project here will need to address those requirements.<sup>7</sup>

<sup>&</sup>lt;sup>5</sup> The proposed project is located seaward of the first public road and the sea, and thus it must be found consistent with all LCP policies as well as the Coastal Act's public recreational access provisions (pursuant to Coastal Act Section 30604(c)).

<sup>&</sup>lt;sup>6</sup> The Coastal Act Section 30210 direction to maximize public recreational access opportunities represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect: it is not enough to simply *provide* access to and along the coast, and not enough to simply *protect* access, rather such access must also be *maximized*. This terminology distinguishes the Coastal Act in certain respects, and it provides fundamental direction with respect to projects along the California coast that raise public recreational access issues, like this one.

Note, for example, that for beach viewsheds such as this, Section 13.20.130 explicitly requires that: "Development shall be sited and designed to fit the physical setting carefully so that its presence is subordinate to the natural character of the site, including through appropriately maintaining natural features (e.g., streams, riparian corridors, major drainages, mature trees, dominant vegetative communities, rock outcroppings, prominent natural landforms, tree groupings, etc.) and requiring

# County CDP Application 201302 70 Geoffroy Drive Bluff Retention Project Page 4 of 7

The project as proposed simply does not meet any of these Coastal Act or LCP tests. In place of maximizing public recreational access opportunities compared to the existing baseline, it would essentially block and preclude any form of access here. Further, the LCP explicitly directs that LCP-designated neighborhood public accessways (where the rudimentary accessway in question in this application is *explicitly so designated* by LUP Policy 7.7.18) be improved, including via path improvements and enhanced maintenance, and further the LCP explicitly calls for an overlook/vista point to be developed with benches and railings *at this location* (LUP Program 7.7(c)). In place of these LCP-required provisions (none of which are addressed/provided for by the proposed project), the proposed project would block and otherwise prevent public access here. Accordingly, we do not believe that the proposed project can be found consistent with the Coastal Act or the LCP on these points.

### **Shoreline Armoring Issues**

Pursuant to the LCP, a "shoreline protection structure" is defined as "any structure or material, including but not limited to riprap or a seawall, placed in an area where coastal processes operate" (IP Section 16.10.040(3g)). The proposed slope repair includes a 1.4:1 geogrid reinforced fill slope, a 2-foot keyway into the Purisima formation covered with a North American green erosion control blanket along a coastal bluff above the sandy beach where coastal processes operate, and thus constitutes a shoreline protection structure. Per the LCP, such shoreline protection structures are only allowed "where necessary to protect existing structures from a significant threat" (see LUP Policy 6.2.16 and IP Section 16.10.070(h)(3)). Such structural protection is only allowable when non-structural measures are infeasible, and when such protection does not reduce public beach access, adversely affect shoreline processes and sand supply. adversely impact recreational resources, or negatively impact habitat. On the whole, these LCP policies recognize that shoreline protection structures have negative coastal resource impacts and are to be utilized sparingly - and only when it can be demonstrated that such measures are warranted and appropriately mitigated, as directed by the LCP.

Here, it is not clear that the proposed project can meet any of these LCP tests either. First, the existing structure being protected is ostensibly the driveway area above the rudimentary trail area, and the "significant threat" is presumably the recent slope failure. However, it is not clear from the project materials that that driveway area would constitute an "existing structure" for shoreline protection structure purposes including because it appears to have been completely redone and replaced since 1977, nor is it clear that the slope failure constitutes a significant threat to it. Further, as a portion of a larger driveway area, it appears that there are likely alternative measures available to address such a threat, should it be conclusively demonstrated, absent the introduction of shoreline protection structures, including via non-structural measures (e.g., realigned pavement area), such as those that might allow for the slope to lay back further naturally, in a way that the failure seems to suggest. Even if the proposed project were

appropriate setbacks therefrom. Screening and landscaping suitable to the site shall be used to soften the visual impact of development unavoidably sited in the public viewshed."

# County CDP Application 201302 70 Geoffroy Drive Bluff Retention Project Page 5 of 7

to meet that portion of the LCP's tests, based on evidence which staff is currently aware of it cannot meet the requirement that it not reduce public beach access or adversely impact recreational resources, including as described in the discussion above. On the contrary, as proposed the project would effectively eliminate any potential for such beach access, and adversely impact recreational utility, at this location, the proposed project would be inconsistent with the LCP on these points. Finally, the effect of the shoreline protection structure on shoreline processes and sand supply have not been documented in the project materials provided. That said, it is our experience that almost all shoreline protection structures, such as the bluff retention structure proposed in this case, lead to discernable and quantifiable impacts on shoreline sand supply and related processes, ultimately helping to contribute to a loss of beaches.

In short, it is not clear that the proposed project can meet all applicable LCP armoring tests required for approval. What *is* clear is that it cannot meet certain LCP armoring tests related to protection of public access, recreation, and the shoreline. Thus, the proposed project cannot be found consistent with the LCP on these points either.

# **CCC Staff Preliminary Recommendation**

We believe that the most efficient way of addressing the issues described would be to ensure that the bluff retention structure and related development is approved in such a way that it also accommodates public access to the beach. Given that the existing condition for purposes of CDP application review is treated as being the presence of a rudimentary access trail, at a minimum, the project needs to provide for same. And if subsequent materials demonstrate that the shoreline protection structure itself proposed to be retained in this application leads to its own coastal resource impacts, as expected. then we recommend that required mitigation to offset such impacts be applied in a way that can enhance the historical rudimentary beach accessway, including as directed by the LCP. As to the LCP-required overlook, it would seem that any requirements thereto are probably best applied to improvements to the accessway itself (e.g., installing at least rudimentary steps along the bluff, if not a low-key stairway that hugs the bluff, etc.), although we are also open to the LCP-described overlook improvements at this location. If fencing is considered, we strongly recommend that only the minimum amount of such fencing as may be required for public safety purposes be allowed at the blufftop edge, and that there be a sufficient opening in it to allow users easy access to the accessway itself. We do not see any compelling Coastal Act or LCP reason for barbed wire, and we believe that it is actually inconsistent with public viewshed and public recreational access provisions, and thus we recommend that it be removed from the project. All signage and any other related development (e.g., drainage components, landscaping to help camouflage the retaining structure and any drainage, etc.) needs to be sited and designed in such a way as to not frustrate the public's ability to access and use the accessway improvements. And finally, all development needs to recognize that it is proposed in a scenic area adjacent to the beach, and all such development must be sensitive to the aesthetics of that setting, including through minimizing visibility and making use of neutral/natural materials and colors as much as possible.

# County CDP Application 201302 70 Geoffroy Drive Bluff Retention Project Page 6 of 7

In short, we believe that the Coastal Act and LCP require modifications to the proposed project to find it consistent with applicable provisions. And we also believe that some fairly minor modifications, including as suggested above, can correct not only the Coastal Act and LCP inconsistencies with the project as proposed, but that these modifications can also serve to resolve longstanding violations associated with this site. On the latter point, please note that the LCP also *requires* that such violations be resolved (and indeed affected coastal resources enhanced) as part of proposed CDP applications (see IP Section 13.20.170),<sup>8</sup> and these types of modifications would also allow for an application to be approved at all in relation to such violations (and conversely, if the violations are not resolved, then Section 13.20.170 does not actually allow for such approval, and denial is required).

Finally, as I am sure you are aware, this site is the subject of significant public interest, particularly related to past violations that have blocked beach access here. We strongly recommend that the County provide the widest possible notice for all hearings on this CDP application, including so that all nearby residents and property owners are made aware, but also so that the broader community is also made aware and can readily participate. To the latter point, we suggest that prominent, accurate (e.g., in terms of what is considered existing versus proposed, as described above; that County CDP action here would be appealable to the Commission; etc.), and descriptive notices be erected where Black's Point Beach and Sunny Cove Beach users can easily see them, in addition to posting at and near the site (e.g., at the base of the bluff, and the public Geoffroy Drive street end). In other words, we would suggest doing everything possible to maximize the public's ability to participate in all proceedings regarding this matter.

Again, thank you for your invitation to provide comments on the proposed CDP application for this project. As described, the project raises a series of significant and substantial coastal resource issues that will require careful consideration, as well as project modifications, to allow for a CDP to be approved consistent with the Coastal Act and the LCP. And, as described, if the proposed project is not so modified, we do not believe that it can be found consistent with these applicable provisions, including because if the CDP violations are not resolved then the LCP requires that the project be denied. Fortunately, we believe that even fairly modest changes can readily address the coastal resource concerns at this location, and we look forward to working with you, the applicant, the community, and interested parties to come to a beneficial resolution through this CDP application. Please do not hesitate to contact me if you have any questions or would like to further discuss these comments.

<sup>&</sup>lt;sup>8</sup> Section 13.20.170 states in operable part: "Development that is proposed for property on which there are existing unresolved coastal development permit violations shall only be approved and allowed if: (1) the approval resolves all such violations through its terms and conditions and (2) such resolution protects and enhances coastal resources, including that it results in a coastal resource condition that is as good or better than existed prior to the violations; or (3) the proposed development is necessary to ensure health and safety, in which case the approval for the development shall specify that an application to resolve the unresolved coastal development permit violation(s) shall be made within 90 days of the approval."

# County CDP Application 201302 70 Geoffroy Drive Bluff Retention Project Page 7 of 7

Sincerely,

— DocuSigned by:

Rainey Graeven

Rainey Graeven
Coastal Planner
Central Coast District
California Coastal Commission

<u>Attachments</u>: Letters from California Coastal Commission Enforcement Staff to County staff and the Geoffroy Drives Homeowners Association dated April 18, 2018, May 4, 2018, June 1, 2018, and June 29, 2018.

#### cc (sent electronically):

Deidre Hamilton, Applicant's Representative
John Leopold, First District Supervisor
Kathy Molloy, Santa Cruz County Planning Director
Matt Johnston, Santa Cruz County Code Compliance
Jeff Gaffney, Santa Cruz County Parks Director
Sheila Branon, California Department of Parks and Recreation

# **Late Comments & Correspondence**

**Application Number 201302** 

**EXHIBIT H** 

## **Nathan MacBeth**

From:

Thomas Mader <twiggins1939@gmail.com>

Sent:

Friday, October 14, 2022 8:54 AM

To:

Nathan MacBeth

Cc:

Dan.Carl@coastal.ca.gov; Bill Parkin; Tisa Murdock

Subject:

Restoration of Public Access Between Black's Beach and Sunny Cove

\*\*\*\*CAUTION:This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.\*\*\*\*

Dear Mr Mac Beth...This letter is in support of removing the barriers blocking the historic coastal trail between Sunny Cove and Black's Beach.

I am petitioning not only for myself, but also for the 200+ local members of the Santa Cruz Bodysurfing Association which I confounded in 1984, and which last month, held our 38th annual Santa Cruz Championships Contest in partnership with the Santa Cruz County Lifeguards who have jurisdiction over our most recent contest sites at Blacks Beach and Lagunas Creek eight miles north of town.

Commencing In the late 1970's, various Geoffrey Drive property owners began erecting barriers to the trail that had allowed us easy access to and from both Sunny Cove and Blacks. This was/is particularly unfortunate on those days when waves would only be "working" at just one of the locations. In surfing terminology, as one is riding down a wave at Blacks Point, you are headed left...conversely at Sunny Cove the wave rides are to the right off the point. This is an important distinction because, pending the direction of the swell...the wave riding at one location, by definition, will always be better than the other. A south swell favors Sunny Cove, a northwest swell favors Blacks.

This may seem like an arcane distinction to non surfers...but to wave riders, there is an almost heavenly delight in sliding down a fast moving glassy wave shoulder..

with the possibility of the crest pouring over you into a "tube".

With the path open it is possible to move from one location to the other in less than five minutes....versus a 25 minute walk all the way out to East Cliff Drive and around to the desired alternative location....This process can take much longer if one is driving a car on a crowded weekend seeking a very limited number of authorized public parking spaces.

When we became of the illegal closures in the late 70's and 80's some of our colleagues began using wire cutters to maintain access to the trail. This process continued off and on into the late 1990's through at least three ownership changes at the hillside site of the trail path.

I recall one of our members, James Geoffrey, being particularly incensed over this illegal practice...since the road was, in fact, named after his grandfather....Jim, at the time, lived in his family home at the end of the street overlooking Sunny Cove.

Like many other older residents, I have enjoyed many wonderful days at both beaches for over 40 years with my friends, wife, children, and now grandchildren....and have a host of fond memories....some of which were occasionally spoiled by the selfishness of self entitled property owners adjacent to the public path....who have now created a "gated community"...off limits to the public.

My family owns and lives in two small houses on and adjacent to public paths that we share with the public in Capitola. One house is on the lagoon near the trestle, and has a back yard bisected by a public path that is a well used, well maintained, walkway.

Our other home is on the edge of the cliff in Depot Hill on what used to be Grand Avenue, but with erosion has been closed to traffic, and is now also a public path... with daily use by neighbors and visitors.

The point here is that my family chooses to be good community citizens...and to share the abundant ocean and lagoon views with others rather than resorting to illegal actions to enhance privacy and self entitlement.

I urge you and your staff to consider the public good and to recommend reopening the path...in the same unpretentious unpaved manner in which it heretofore existed.

....for the benefit of not only body surfers, but the entire beach going community.

Most sincerely and with Aloha....Tom Wiggins Mader...101 Saxon Ave and 415 Riverview Avenue, Capitola.

Sent from my iPad

#### Nathan MacBeth

From:

Ira Harris <irajamesharris@gmail.com>

Sent:

Tuesday, October 18, 2022 9:24 AM

To:

Nathan MacBeth

Subject:

Application 201302 70 Geoffroy

Attachments:

1142.1.Notice..Judgment.pdf; 1142.1.SCPlanning.102820.pdf

\*\*\*\*CAUTION:This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.\*\*\*\*

Dear Mr. MacBeth: I have had the opportunity to review your Staff Report for this Friday's hearing. Thank you for recommending approval of the emergency repair and recognizing that no beach access condition can be imposed on this project.

While the report refers to the Coastal Commission's commentary, it fails to reference or include my response or the fact that a Writ of Mandate was entered against the County and Coastal Commission on August 10, 2020 nor that title has been quieted in each of the property owner's favor as of September 30, 2022. See attached Notice of Entry of Judgment and another copy of my October 29, 2020 response.

Ira James Harris, Esq. Law office of Ira James Harris One Camino Sobrante, Suite 208 P.O. Box 1478 Orinda, CA 94563

TC: (925) 258-5100 Fax: (925) 281-4977

#### E: irajamesharris@gmail.com

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#### Law Offices of

# **IRA JAMES HARRIS**

October 29, 2020

Via E-mail: Nathan.MacBeth@santacruzcounty.us

Nathan MacBeth Santa Cruz County Planning Department 701 Ocean Street, 4<sup>th</sup> Floor Santa Cruz, CA 95060

Re:

Response to Rainey Graeven's October 23, 2020 Commentary Application 201302 – 70 Geoffroy Drive Emergency Bluff Restoration Our File No. 1142.1

Dear Mr. MacBeth:

Please be advised that this office represents the applicants, Mark and Suzanne Cauwels, the owners of 70 Geoffroy Drive, Santa Cruz, California APN 028-143-35. Please direct all further communication regarding the processing of this application to my attention.

As you no doubt know, this application follows a permitted emergency like-kind repair, which was completed in early August 2020. I am in receipt of a copy of Rainey Graeven's October 23, 2020 letter purporting to belatedly "comment" on the above referenced application. I presume from her introductory paragraph that the County solicited input from the California Coastal Commission (hereinafter as the "COMMISSION"). When was this input solicited? Was that done pursuant to Santa Cruz Municipal Code 13.20.080 (B)?

Ms. Graeven disengenuously claims that "open" enforcement actions exist as it relates to this property and that those purported violations involve a purported "historic prescriptive right of public access" between Blacks Beach and the end of Geoffroy Drive through 70 Geoffroy Drive. That is not only blatantly false it is clearly undermined by the COUNTY'S and COMMISSION'S own records!

#### THE ALLEGED EXISTING BASELINE LACKS FACTUAL OR LEGAL SUPPORT:

Development of the lots and the private drive on Geoffroy all pre-date the California Coastal Act. The Cauwels have written and photographic evidence supporting the fact that a (keyed and private) gated fence existed at the top of the bluff barring access down the northeastern slope for well over 50 years. [See, Exhibit 1 RFJN A - 000013-14 and Exhibits 3 and 4].

#### 1. Alleged Violation No. V-3-01-055:

Despite the above, since at least 1986 the COUNTY through the County of Santa Cruz Planning Department (hereinafter as "Local Agency") and the COMMISSION have received periodic unsupported complaints by certain members of the public about a "blocked access" down some unspecified section of the bluff at the end of Geoffroy Drive. [See, Exhibit 2 RFJN B - 000001-3 and 000007]. On each occasion the Local Agency and/or COMMISSION failed to identify the exact location or require any specific access other than a dedication of the sandy beach portion below the bluff and seawall from 60 Geoffroy as part of V-3-01-055 as identified in Exhibit 1 RFJN A - 000002-3: choosing instead to refer members of the public to their right to bring a lawsuit to perfect any prescriptive easement claimed. [See, Exhibit 2 RFJN B - 000004 and Exhibit 5 RFJN E - 000011-12 and 000023, Findings 2 and 4]. It did so because of (amongst other things) the long history of the lack of public access along that slope. See. Exhibits 3, 4 and 9. The V-3-01-055 violation related to 60 Geoffroy Drive (not 70 Geoffroy Drive) and was clearly resolved through the required dedication in Exhibit 1 RFJN A - 000003 and 000014. I personally subpoenaed the COMMISSION's files on this 1986 Violation in 2010 and it was completely empty!

When complaints arose, once again, in 1997 and 2009-2010, the Local Agency investigations reconfirmed that no public access existed along the northeastern slope or if it had existed at all, it had been closed for decades, and the complaint files were closed (and once again resolved)! [See, Exhibit 2 RFJN B - 000001-3 and 000007 and Exhibit 5 RFJN E - 000011-12].

No prescriptive easement action has ever been instituted and no one has responded to the Cauwels' Quiet Title claims herein. See, the Complaint to Quiet Title and for a Writ of Mandamus attached as **Exhibit 6 RFJN G** and the Entry of Default on any and all members of the Public as **Exhibit 7 RFJN F**.

Further, any action on said "alleged" violation (which pre-dated the Coastal Act) would be time barred. Such statutory violations have a one (1) year statute of limitations for any assessment of a penalty or forfeiture [Code of Civil Procedure Section 340] or a three (3) year statute for any other liability created by statute [Code of Civil Procedure Section 338]. Without any specific guidance by the Coastal Act such general statutes of limitation control. G.H.I.I. v. MTS, Inc. (1983) 147 Cal.App.3<sup>rd</sup> 256, 276. The COMMISSION has no authority to expand the limitation periods set by the legislature. Hittle v. Santa Barbara County Employees Retirement Ass'n (1985) 39 Cal.3d 374, 387. As a result, if not resolved by Exhibit 1, the statute of limitations has long since lapsed on any such enforcement action.

#### 2. Alleged Violation No. V-3-18-0018:

The Cauwels are one of the five property owners involved in the above-mentioned lawsuit [Exhibit 6 RFJN G] which Ms. Graeven conveniently fails to mention in her letter. The five properties extend down a paved 15-foot wide <u>private driveway</u> at the end of Geoffroy Drive. The right to access the private driveway that lies within the "EASEMENT" which is legally described in each of the title reports for the five properties as being Twenty Five (25) feet in width, is granted to each of the five properties.

From the end of Geoffroy Drive northwest of the private drive lie 90 Geoffroy (APN 028-143-29), 80 Geoffroy (APN 028-143-37), the applicant's lot at 70 Geoffroy, which then terminates at 60 Geoffroy (APN 028-143-34). To the east and down the bluff from the end of Geoffroy all the way to Blacks Beach at the end of 60 Geoffroy lies 63 Geoffroy (APN 028-143-44). One would have to trespass over 63 Geoffroy's rear acreage to get to the bluff leading up to 70 Geoffroy, then trespass across the easement serving all properties as well as the lots at 70, 80 and 90 Geoffroy to reach the public roadway.

After trespassers had broken into and burglarized 60 Geoffroy Drive in 2014, and in the process started a fire that gutted the house, Fowler Packing Company and the other four property owners inquired of the Local Agency regarding the possibility of installing an electric gate and other landscape improvements across the private driveway that serves their properties. The Local Agency was then imbued with authority to determine whether such projects were appealable, non-appealable or exempt as the Local Coastal Plan (hereinafter as "LCP") had been certified by the Commission. See, Cal. Pub. Res. Code Sections 30519 (a), 30500, 30600 (d) and Hagopian v. State of California (2014) 223 Cal.App.4th 349, 362-363.

Given preliminary comments from the County Planner, the homeowners proceeded to file an application [No. 151297] for a Coastal Development Permit and Over-Height Fence Certification as of October 20, 2015. The application included a detailed set of plans and specifications as well as a survey map. The Santa Cruz County Code (hereinafter as "SCCC") required the Planning Director to determine the project's status at the time of submittal or as soon thereafter as possible, and certainly before the permit was considered complete. See, SCCC Sections 13.10.525, 13.20.080 and 18.10.230. Here, the Local Agency properly processed the application: it requested additional information, posted the plans on the County Website, required the applicants to post the property with Notice of their development permit application, and solicited comments from any and all agencies involved.

After completing the above, the Local Agency approved the Development Permit and Over-Height Fence Certification on January 22, 2016, which approval was a necessary precursor to any application for a building permit. The Local Agency, exercising its discretion and delegated authority under the certified LCP, found the application exempt under Sections 13.20.060 and 13.20.061 which was posted on its website and later confirmed by their internal log.

In reliance on that determination, the applicants filed a Building Permit Application [No. B-161575] as of February 24, 2016 which was approved as of April 4, 2016 and proceeded to install an electric gate, fencing and landscape improvements at a cost in excess of \$175,000. All such improvements were inspected and finally accepted by the Local Agency in 2016.

The COMMISSION purportedly received a complaint from a member of the public in late 2017, inquired regarding the absence of a FLAN and were told that the County had found the application exempt. Despite that the COMMISSION threatened the County as well as each of the applicants with civil administrative penalties should they not remove the "unpermitted" improvements (including the fence at the blufftop that had existed since the late 1950's or early 1960's) or reapply for a Coastal

Development Permit through which the COMMISSION indicated a public access condition would be imposed!

While the Cauwels along with the other applicants on this gate project, obviously concerned about their exposure to civil administrative penalties, opted to remove the gate pending resolution of the dispute, they nonetheless proceeded with the above-mentioned complaint. Exhibit 6. The writ of mandamus sought against BOTH the County and the COMMISSION was granted by the Santa Cruz Superior Court on August 10, 2020. See, Exhibit 8 RFJN H. This decision disposed of Violation No. V-3-18-0018 and with it any right by the COMMISSION or the COUNTY to claim that said improvement violated the Coastal Act or needed to provide for public access through to or from Black's Beach.

As a result, there are no "existing" unresolved enforcement actions against this property! Ms. Graeven's claim that 13.20.170 requires resolution of these violation notices is patently false on its face.

#### 3. The Alleged Baseline Lacks Factual Or Legal Support:

Given the above, there is no legal basis for Ms. Graeven's claims. The fence and locked gate at the blufftop predated the Coastal Act and has prevented public access for decades. This was known and resolved in 1986 as it relates to 60 Geoffroy Drive. While the COMMISSION and COUNTY have addressed vague claims from specific individuals to blockage of a trail somewhere along the end of Geoffroy for decades, they have never presented any evidence supportive of such a public prescriptive right. The barbed wire on top of the fence and restrictive signage has also existed for decades. These issues were all resolved in the complaint and Order granting the Writ Of Mandamus!

Ms. Graeven unbelievably claims that the applicant (or possibly one of the 5 property owners along this private driveway) had a security guard blocking or deterring public access. This is also patently false: all she had to do was check with the Chief of Police or Fire Chief as she would have found out that a Mark Woodward hired the security forces to protect his property against vandalism by gangs of teenagers who were regularly trespassing and vandalizing his properties. It had nothing whatsoever to do with the applicants or any alleged public access through the Geoffroy private driveway to Blacks Beach, which coincidentally was then hazardous as the slide had taken out the driveway and much of the bluff face.

#### THERE ARE NO PUBLIC RECREATIONAL ACCESS ISSUES.

Ms. Graeven proceeds to bootstrap the hearsay apparently contained in unsupported online questionnaires regarding vague public "memories" of periodic access somewhere along the slope at the end of Geoffroy Drive, into a conclusion that such rights not only existed and continue to exist, but that the bluff Restoration somehow adversely impacts these rights. Ms. Graeven cites to *LT-WR*, *LLC v. California Coastal Commission* (2007) 152 Cal.App.4<sup>th</sup> 770 but apparently failed to appreciate the holding in that case that indicated that public prescriptive rights do not exist until the Court finds sufficient evidence of such (neither the COMMISSION nor COUNTY have any right to unilaterally determine that such rights exist). See, *LT-WR*, *LLC at* pp. 805-806.

#### THE BLUFF RESTORATION REPRESENTS A LIKE-KIND EMERGENCY REPAIR.

While Ms. Graeven appears to recognize that the bluff restoration stems from a storm drain inlet (that became blocked as a result of leaves and debris from a nearby tree on County property) as a result of five (5) days of heavy wind and rains over the Thanksgiving Holiday weekend in 2019; she fails to recognize that such falls within the definitions of "disaster" "emergency" and "structure" in SCCC 13.20.040. A "disaster" applies to "any situation in which the force or forces which destroyed a structure to be replaced were beyond the control of its owner." An "emergency" is defined as "a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services." Finally, contrary to Ms. Graeven's opinion, the storm drainage devices and adjacent driveway and curb clearly constitute structures as Chapter 13 expansively identifies a "structure" as "anything constructed or erected."

As no right of public access has been established across the private driveway and down the bluff slope off 70 Geoffroy, and none can be imposed by any condition on this Applicant (as such would have to involve all five properties), the like-kind repair or restoration of the slope cannot be said to adversely affect public access or public recreation.

#### CONCLUSION

The like-kind emergency repair or restoration of the private driveway atop the bluff [which presented an undeniable health and safety issue as it severely restricted the use and access to 70 and 60 Geoffroy and risked further personal injuries and property damage if not repaired] the repair was clearly within *Public Resources Code Section 30610 (d)*. In addition, it represents a repair and/or maintenance activity that has "not resulted in the addition to, or enlargement or expansion of, the object of the repair..." within *Section 30610 (g)* as it is solely the replacement of a "structure ...destroyed by a disaster." Accordingly, the emergency authorization of this like-kind repair of the damage caused by a disaster is and was authorized without a Permit pursuant to Public Resources Code Section 30610!

In closing, as the applicant has no ability to provide public access or public recreational benefits, without securing such rights from the other four adjacent property owners across their respective properties, there is no reasonable nexus for any public access conditions on this application as suggested by Ms. Graeven.

Very truly yours,

Law Offices of IRA JAMES HARRIS

Ira James Harris

Ira James Harris

Attachments: Exhibits 1 to 9

cc Rainey Graeven — Rainey.Graeven@coastal.ca.gov
John Leopold — John.Leopold@santacruzcounty.us
Kathy Molloy — Kathy.Molloy@santacruzcounty.us
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PLAINTIFF/PETITIONER: FOWLER PACKING COMPANY, et. al.	
DEFENDANT/RESPONDENT: COUNTY OF SANTA CRUZ, et.al.	
NOTICE OF ENTRY OF JUDGMENT	
OR ORDER	CASE NUMBER: 19CV00673
(Check one): X UNLIMITED CASE LIMITED CASE (Amount demanded (Amount demanded was	
exceeded \$25,000) \$25,000 or less)	
TO ALL PARTIES:  A judgment, decree, or order was entered in this action on (date): August 10, 2020 and 2. A copy of the judgment, decree, or order is attached to this notice.	September 30, 2022

Page 1 of 2

Date: October 17, 2022

(TYPE OR PRINT NAME OF X ATTORNEY

Ira James Harris

PARTY WITHOUT ATTORNEY)

# **ELECTRONICALLY RECEIVED** 8/7/2020 3:09 PM IRA JAMES HARRIS, SB #99760 ] LAW OFFICES OF IRA JAMES HARRIS 2 One Camino Sobrante, Suite 208 P.O. Box 1478 3 Orinda, CA 94563 4 Telephone: (925) 258-5100 Facsimile: (925) 281-4977 5 Attorney for Plaintiffs/Petitioners 6 7 8 9 10 11 12 13 14

Electronically Filed
Superior Court of California
County of Santa Cruz
August 10, 2020
Alex Calvo, Clerk
By Deputy, Gonzalez, Sandra

Solar Hogh

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

FOWLER PACKING COMPANY, a California
Corporation, WILLIAM P. AND LINDA L.
SULLIVAN, TRUSTEES OF THE SULLIVAN
FAMILY REVOCABLE LIVING TRUST DATED
MAY 2, 1996; MARK A. AND SUZANNE J.
CAUWELS, TRUSTEES OF THE MARK AND
SUZANNE CAUWELS FAMILY TRUST
INITIALLY CREATED ON JULY 30, 1992;
NORMAN L. CHAPMAN AND CAROL S.
CHAPMAN, TRUSTEES OF THE 2000
NORMAN L. CHAPMAN & CAROL S.
CHAPMAN REVOCABLE TRUST UNDER
INSTRUMENT DATED JUNE 6, 2000; DAWNA
SUTTON, TRUSTEE OF THE SUTTON FAMILY
REVOCABLE TRUST DATED OCTOBER 6,

Plaintiffs,

vs.

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26 27 28 COUNTY OF SANTA CRUZ, a Public Entity; CALIFORNIA COASTAL COMMISSION, a Public Agency: ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS' TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO; and DOES 1 to 100, inclusive.

Defendants.

No.: 19CV00673

ORDER GRANTING PETITIONERS WRIT OF MANDAMUS PURSUANT TO C.C.P. SECTION 1085

Complaint Filed: February 27, 2019

Petitioners are five property owners with a private driveway easement on Geoffrey Drive. Santa Cruz, located on a bluff above Twin Lakes State Beach. Petitioners challenge the Coastal Commission's jurisdiction to (1) reverse the County's exemption determination on their application for a Development Permit to install a gate and fence on their casement; (2) require Petitioners to either remove the gate and fence or apply for a Coastal Development Permit (CDP); and (3) impose civil penalties if Plaintiff's refuse to remove the gate and fence to allow public access to Twin Lakes State Beach. Petitioners seek a writ of mandate directing the County and the Coastal Commission to (1) withdraw demands for the retraction of their Development Permit; (2) withdraw demands for another CDP for the gate and improvements; and (3) withdraw a threat of civil administrative penalties under Pub. Resources Code §30821 in the event that Plaintiff's do not remove the gate and fence to allow public access to the beach.

The Commission asserts that Petitioners' requests for relief are not ripe for adjudication, because neither the County or the Commission has pursued any "formal" enforcement efforts; that Petitioners' failure to exhaust their administrative remedies by applying for a CDP bars their claim; and that the petition fails on the merits, because Petitioners did not apply for a Coastal Development Permit, they did not qualify for an exemption under the County's Local Coastal Plan (LCP), and there was no formal exemption determination or final agency action triggering the deadlines for Commission action. The Commission concedes that it does not have appellate jurisdiction but asserts that it may exercise its independent enforcement powers over the subject gate and fence.

## I. The Regulatory Scheme For Exemption Determinations Under The LCP

The County has a certified Local Coastal Plan. Therefore, development review authority over any new development is "delegated to the local government that is implementing the local coastal program", and "shall not longer be exercised by the commission..". Public Resources Code §30600(d) SCCC §13.20.080 provides the regulatory framework for the determination of exemptions from the requirement of a CDP, and the notice and hearing procedures thereafter. The exemption determination is to be made "by the local government at the time the application for development within the Coastal Zone is submitted or as soon thereafter as possible, and in all cases prior to the application being complete for processing"; and "may be made by any designated local government employee".

ORDER GRANTING WRIT OF MANDAMUS

 If the exemption determination is challenged by the applicant or an interested person, or if the County wishes to have a Commission determination as to the appropriate designation, the County is to notify the Commission by telephone and request the Executive Director's opinion. (SCCC §13.20.080 (B)) The Executive Director then has two working days to transmit his or her determination. (SCCC §13.20.080 (C)) If the Executive director's determination differs from the County's determination the Commission is to hold a hearing to determine the appropriate determination. (SCCC §13.20.080(D))

The information on development permits within the Coastal Zone which are exempt are to be maintained on the County's computer system. "Upon request a list of the exempt applications will be generated": and "upon a request from the Coastal Commission Executive Director for any particular case" the County is to provide the same information that is required for permit exclusions, as set forth in subsection (F). (SCCC \$13.20.080 (E))

### II. Petitioners' Application For A Development Permit

On October 20, 2016 Petitioners submitted an application to the County for a Development Permit and Over-Height Fence Certification for the installation of a gate and fence across the easement. [AR 15-18] The application identifies the project as being in the Coastal Zone [AR 15]. The application was "reviewed in light of 13.20.062" by County Planner Jerry Busch, the designated County employee authorized under the County's Local Costal Plan (LCP) to determine if the project was exempt from the requirement of a coastal development permit; and Mr. Busch determined that the project was exempt [AR 86]. On January 22, 2016 the County approved and issued the Development Permit. [AR 24]. In February 2016 Petitioners were issued a building permit [AR 31-33] and proceeded to install the fence and gate at a cost of \$175.000.

There were no challenges to the County's exemption determination on Petitioners' application, the County did not request an opinion from the Commission on the determination, and the Commission did not request a list of exempt applications or information on Petitioners' application. A June 6, 2018 entry in the County's computer system identifies Petitioner's application as exempt.

#### III. The Commission's Actions

In November 2017, the Commission began to make inquiries of County staff as to whether Petitioners' gate was permitted. [AR 87-88]. In January 2018 the County advised the Commission that the gate and fence were permitted and had been deemed exempt from a CDP [AR 86]. In a letter dated April 11, 2018 an Enforcement Supervisor for the Commission "formally" brought the County's attention to the Commission's position that a CDP was required for the "unpermitted" gate. The letter advised that the gate requires a CDP and "needs to be removed, or if not removed authorized by a CDP" and that any CDP would require provisions for public access to Twin Lakes State Beach. The Commission offered to "coordinate with County regarding resolution of the violations," and advised that if the County did not act to resolve the matter and restore public access, the Commission "may impose enforcement action". [AR 36-37]

On May 4, 2018, the Commission sent a letter to Petitioners' titled "Notice of Violation," and references "the above referenced violation-file". The letter states that the County requested the Commission to take the "enforcement lead", and recites the basis for the Commission's conclusion that a CDP was required; states that "In cases involving violations of the public access provisions of the Coastal Act, as appears to be the case here" civil penalties of up to \$11,250 per day may be imposed under §30821(h) if the property owner does not correct the violations within 30 days of receiving written notification from the Commission regarding the violation; and further states "please consider this letter to be 'written notification' for purposes of §30821(h)"." The letter concludes by demanding that Petitioners submit "by June 8, 2018 a complete CDP application to authorize the subject gate and signs in a manner that respects historic public access and use or remove the gate and signs". [AR 44-45]

On June 1, 2018, in response to Petitioner's offer to meet and confer, the Enforcement supervisor for the Commission sent a letter to Petitioners' counsel asserting the Commission's authority to challenge the County's exemption determination, that a CDP was required which would be conditioned on public access, and demanding that that Petitioners submit a complete CDP application "by July 2, 2018 or remove the gate/fence" [AR 51-55].

On June 29, 2018. The Commission's Enforcement Supervisor again wrote to Petitioners' counsel, asking if Petitioners intended to apply for a CDP or if "we will need to address this matter

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 through other means including formal enforcement action as detailed in our previous letters. " [AR 66]

On August 2, 2018 Petitioners agreed to temporarily remove the gate, under protest, in order to avoid the threatened civil penalties. [AR 83]

# IV. Petitioners' Claims Are Ripe For Adjudication

The Commission contends that Petitioners' claims are not ripe, because the Commission merely expressed an opinion that a CDP was required for the gate, and it has never demanded that Petitioners apply for a CDP, has not pursued an enforcement action, and has not demanded a retraction of Petitioners' development permit. The letters from the Commission's Enforcement Supervisor titled Notice of Violation, referencing a violation file, and demanding that Petitioners apply for a CDP or remove the gate by specific deadlines demonstrates that the Commission has initiated an enforcement action. Petitioners' claims are ripe.

#### V. There Are No Administrative Remedies Available To Petitioners

The Commission essentially argues that Petitioners must accept the Commission's authority to challenge the County's exemption determination by submitting a new CDP application in order to exhaust their administrative remedies. However, Petitioners are without an available administrative remedy as to their present challenge to the Commission's authority and jurisdiction.

The Commission's reliance on South Coast Regional Commission v. Gordon (1977) 18 Cal. 3d 832, as authority for its argument—that Petitioners are required "to raise their arguments to the Commission before seeking relief in the courts, even if they "did not apply for a permit because of the view that one was not required", is misplaced. In that case the court reasoned that the defendant was attempting "to raise by way of defense a matter which is initially committed to the Commission's determination, and which he has not presented to that agency". Here, however, Petitioners did apply to the County for a development permit under the County's certified LCP.

# VI. The Exemption Determination Was Made In Full Compliance With The County's Procedures Under The LCP

The Commission argues that Petitioners never applied for a CDP, and that there was only an "informal" belief by a County employee that the project was exempt—not a formal exemption determination. As authorized under SCCC §13.20.080 the County employee designated to make

exemption determinations under the County's LCP reviewed Petitioners' development permit application, which indicated that the project was in the Coastal Zone and determined that it was exempt from the CDP requirement.

# VII. Commission Docs Not Have Authority To Challenge The County's 2016 Exemption Determination.

The Commission admits that it does not have appellate jurisdiction over the exemption determination and asserts instead that it has broad independent enforcement authority as to the subject gate and fence. The Commission cites no authority for this position. Moreover, Petitioners properly applied for a development permit, and the gate and fence were permitted under the County's LCP authority. Therefore, there is no violation to enforce.

The time frames for the County's exemption determination ("as soon as possible" after the application is submitted and in all cases prior to the application being deemed complete), and for the Commission's transmittal of a contrary determination (two working days after a local government's request for review) suggest that the County's exemption determinations are to be considered final within a short time frame, and do not remain open to challenges by the Commission many years later. The County's certified LCP does not require notice to the Commission when exemption determinations are made, and instead puts the Commission on inquiry notice as to these determinations. Not having made any inquiry or utilized the available procedures under SCCC §13.20.080 to review the County's exemption determination for error, the Commission no longer has authority to challenge the County's exemption determination, which is now final.

# VIII. The County Has Authority To Perform The Acts The Petition Seeks To Compel

In light of the foregoing, the County's position that the writ is not properly directed at the County, because the Commission retains authority to challenge the County's exemption determination and enforce compliance with State law, is incorrect.

Petitioner's First Cause of Action for a Writ of Mandamus directing the County and the Coastal Commission to (1) withdraw demands for the retraction of their Development Permit: (2) withdraw demands for another CDP for the gate and improvements; and (3) withdraw any threat of civil

ORDER GRANTING WRIT OF MANDAMUS

1	administrative penalties under Pub. Resources Code §30821 in the event that Plaintiffs do not remove	
2	the gate and fence to allow public access to the beach is HEREBY GRANTED.	
3	APPROVAL AS TO FORM:	
4	Dated: July 30, 2020	Law Office of Ira James Harris
5		
6		By G.
7 8		Ira James Harris. Esq. Counsel for Plaintiffs/Petitioners
9		Fowler Packing Company et. al.
10	Dated: July 31. 2020	Santa Cruz County Counsel
11		Di Son
12		Daniel Zazueja. Esq.
13		Counsel for County of Santa Cruz
14	August 5, 2020 Dated: July2020	Attorney General of California
15		Joel Jacobs Office - 13rd Jacobs, Date - 13rd
16		Ву
18		Joel S. Jacobs, Esq. Counsel for the California Coastal
19	IT IS SO ORDERED:	Commission
20	Dated: August 2020	SANTA CRUZ SUPERIOR COURT
21	Signed: 8/10/2020 02:18 PM	- LIRT CO
22		Ву
23		Hon. Judge Timothy R. Volkmann
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#### DS ELECTRONICALLY RECEIVED 9/28/2022 10:25 AM Electronically Filed IRA JAMES HARRIS, SB #99760 LAW OFFICES OF IRA JAMES HARRIS Superior Court of California One Camino Sobrante, Suite 208 County of Santa Cruz P.O. Box 1478 3 September 30, 2022 Orinda, CA 94563 Mex Calvo Clerk Telephone: (925) 258-5100 Facsimile: (925) 281-4977 By Debuty, Salsedo, Declan 9/30/2022 8:31:12 AM 5 Attorney for Plaintiffs 6 7 8 SUPERIOR COURT OF CALIFORNIA 9 COUNTY OF SANTA CRUZ 10 11 FOWLER PACKING COMPANY, a California No.: 19CV00673 Corporation, WILLIAM P. AND LÍNDA L. SULLIVAN, TRUSTEES OF THE SULLIVAN 12 [PROPOSED] JUDGMENT ON THE SECOND AND THIRD CAUSES OF FAMILY REVOCABLE LIVING TRUST DATED ) 13 ACTION QUIETING TITLE. MAY 2, 1996; MARK A. AND SUZANNE J. CAUWELS, TRUSTEES OF THE MARK AND [Code of Civil Procedure §§ 764.010 to 764.080] 14 SUZANNE CAUWELS FAMILY TRUST INITIALLY CREATED ON JULY 30, 1992; NORMAN L. CHAPMAN AND CAROL S. CHAPMAN, TRUSTEES OF THE 2000 15 16 NORMAN L. CHAPMAN & CAROL S CHAPMAN REVOCABLE TRUST UNDER Complaint Filed: February 27, 2019 INSTRUMENT DATED JUNE 6, 2000; DAWNA Writ of Mandamus GRANTED: 08/10/2020 17 SUTTON, TRUSTEE OF THE SUTTON FAMILY 18 REVOCABLE TRUST DATED OCTOBER 6, 1997 19 Plaintiffs. 20 21 VS. COUNTY OF SANTA CRUZ, a Public Entity; 22 CALIFORNIA COASTAL COMMISSION, a Public Agency; ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE PROPERTY DESCRIBED IN THE 23 24 COMPLAINT ADVERSE TO PLAINTIFFS' 25 TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO; and DOES 1 to 100, inclusive, 26 Defendants. 27 28

JUDGMENT QUIETING PLAINTIFFS TITLE

This matter came on regularly before Honorable Judge John Gallagher in Department 10 through a application for a Default Judgment on the following documentation: (1) a dismissal without prejudice of all Doe Defendants named on the First and Second Causes of Action; (2) a dismissal without prejudice of the California Coastal Commission on the First Cause of Action; (3) a Memorandum of Points & Authorities and a Declaration from Plaintiff's counsel Ira James Harris in support of the application evidencing a petition for service by publication, proof of service by publication and entry of a default by the Clerk as against ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS' TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO, and photographic evidence of the long period of blockage of the northeastern bluff edge leading down off the private driveway from Plaintiffs' residence to Twin Lakes State Beach; and (4) Declarations from each of the property owners with title records and other evidence of the blockage of said slope. The matter has been submitted to the Court for decision, and the Court having made its Findings of Fact and Conclusions of Law states:

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs FOWLER PACKING COMPANY, a California Corporation, WILLIAM P. AND LINDA L. SULLIVAN, TRUSTEES OF THE SULLIVAN FAMILY REVOCABLE LIVING TRUST DATED MAY 2, 1996; MARK A. AND SUZANNE J. CAUWELS, TRUSTEES OF THE MARK AND SUZANNE CAUWELS FAMILY TRUST INITIALLY CREATED ON JULY 30, 1992; NORMAN L. CHAPMAN AND CAROL S. CHAPMAN, TRUSTEES OF THE 2000 NORMAN L. CHAPMAN & CAROL S. CHAPMAN REVOCABLE TRUST UNDER INSTRUMENT DATED JUNE 6, 2000; DAWNA SUTTON, TRUSTEE OF THE SUTTON FAMILY REVOCABLE TRUST DATED OCTOBER 6, 1997 as of February 27, 2019, the date upon which they commenced the above-entitled action, were and are (with the exception of those interests then recorded on the title to their properties that are not involved in any issue of public access through the properties to Twin Lakes State Beach) the owners of fee simple title absolute holding all right, title, estate and interest in the entirety of their individual residential properties, in actual and peaceable possession of the private driveway easement that extends through their properties more particularly described as follows:

JUDGMENT QUIETING PLAINTIFFS TITLE

Twenty Five (25) feet in width, measured at right angles, twelve and one-half (12.5) Feet on each side of the following described centerline:

Beginning at the 3/8 inch iron pipe on the western boundary of the map entitled "Tract Number 57, Santa Maria Cliffs," being a part of Section 20, Township 11 South, Range 2 West, Mount Diablo Meridian, Santa Cruz County, California," filed for record in the office of the County Recorder of Santa Cruz County on March 11, 1947 in Map Book 28 at Page 48, Santa Cruz County Records, from which the most northern corner of Lot 22 as shown on said Map bears South 25° 10' West 12.50 Feet distant;

Thence from said Point of Beginning North 64° 50' West 98.18 Feet;

Thence South 81° 52' West 25 Feet to a Point on the Southeastern Boundary of the land conveyed by Joe L. Mello et. ux. to Vincent J. Coates et. ux. recorded May 4, 1972 in Volume 2197 Page 259, official records of Santa Cruz County;

Thence North 80° 12' West 58.02 Feet to the Northwester Boundary of said land of Coates.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that no person other than each Plaintiff named above, including the MEMBERS OF THE PUBLIC named as ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS' TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO Defendants, now have any estate, right, title, interest, or claim in or to the real property, or any part of the real property, either legal or equitable, present or future, vested or contingent, prescriptive or otherwise other than those appearing of record on the title reports for the respective properties presented to the Court as part of this proceeding which do not concern "public access through the properties to view or access Twin Lakes State Beach."

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that no person other than each respective Plaintiff has any mortgage or other lien of any description on the real properties or any part of the real properties involved, either legal or equitable, present or future, vested or contingent, prescriptive or otherwise other than those appearing of record on the title reports for the respective properties

JUDGMENT QUIETING PLAINTIFFS TITLE

presented to the Court as part of this proceeding which do not concern "public access through the properties to view or access Twin Lakes State Beach." IT IS FURTHER ORDERED ADJUDGED AND DECREED that the title to each Plaintiff's real property is established and quieted as against all the world. SANTA CRUZ COUNTY SUPERIOR COURT Dated: , 2020 Hon. Judge Timothy Volkmann 

JUDGMENT QUIETING PLAINTIFFS TITLE

### PROOF OF SERVICE

[C.C.P. Section 1013, 2015.5]

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In re

Fowler Packing Company v. County of Santa Cruz Santa Cruz Superior Court Action No. 19CV00673 Our File No. 1142.1

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I am a citizen of the United States, a resident of the State of California, and am employed in the County of Contra Costa, State of California. I am over eighteen (18) years of age and am not a party to the above-entitled action. My business address is the law Offices of Ira James Harris, One Camino Sobrante, Suite 208, P.O. Box 1478, Orinda, California 94563. On the date referenced below, I served the following document(s) in the manner indicated below on the person(s) listed on the attached Service List:

Plaintiff's Application for Court Default Judgment on 1st and 2nd Causes of Action for Quiet Title Pursuant to CCP Section 579; Memo of Points & Authorities and Request For Judicial Notice with the declarations of Cauwels, Chapman, Harris, Parnagian, Sklar, Sullivan and Sutton with Exhibits A through K and the prior dismissal without 11 prejudice along with a Proposed Judgment.

I		
12		U.S MAIL [CCP §§ 1013(a) & 2015.5]: by placing the document(s) listed above in a
13		sealed envelope, with First Class postage thereon fully prepaid, and deposited the same in the United States mail at Orinda, California, addressed as set forth on the
14		attached Service List. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing, which deposits mail to the US Postal
15		Service on the same day, with postage fully prepaid in the ordinary course of business.
16		
17	x	E-MAIL OR FACSIMILE TRANSMISSION [CCP §§ 1010.6, 1013(e), 2015.5 & CRC 2008]: Based on court order or per agreement of the parties to accept service, I
18		caused the documents to be sent to the listed persons at the e-mail or facsimile numbers listed on the attached Service List. I did not receive any error message or
19		other indication that the transmission was unsuccessful. I am familiar with the firm's practices in this regard and the documents were transmitted in the regular
20		course of business.
21		PERSONAL DELIVERY: by personally delivering the document(s) listed above to the person(s) at the address(es) set forth on the Service List.
22		
23		OVERNIGHT DELIVERY [CCP §§ 1013(c) & 2015.5]: by placing the document(s) listed above in a sealed envelope marked next-day delivery by
24		·
25	×	(State) I declare under penalty of perjury under the laws of the State of California
26		that the foregoing is true and correct and that this declaration was executed on September 22, 2022 at Orinda, California.
27		

PROOF OF SERVICE

- 1 -

Exhibit 3 A-3-SCO-23-0003 Page 282 of 311

# SERVICE LIST

In re

Fowler Packing Company v. County of Santa Cruz Santa Cruz Superior Court Action No.19CV00673
Our File No. 1142.1

County of Santa Cruz	Daniel Zazueta Santa Cruz County Counsel 701 Ocean Street, Room 505 Santa Cruz, CA 95060	TC: (831) 454-2040 Fax: (831) 454-2115 E: daniel.zazueta@santacruzcounty.us			
California Coastal Commission	Xavier Becerra David G. Alderson Joel S. Jacobs Attorney General of California 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550	TC: (510) 879-0279 Fax: (510) 622-2270 E: <u>Joel.Jacobs@doj.ca.gov</u>			

## PROOF OF SERVICE

[C.C.P. Section 1013, 2015.5]

In re

Fowler Packing Company v. County of Santa Cruz Santa Cruz Superior Court Action No. 19CV00673
Our File No. 1142.1

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I am a citizen of the United States, a resident of the State of California, and am employed in the County of Contra Costa, State of California. I am over eighteen (18) years of age and am not a party to the above-entitled action. My business address is the law Offices of Ira James Harris, One Camino Sobrante, Suite 208, P.O. Box 1478, Orinda, California 94563. On the date referenced below, I served the following document(s) in the manner indicated below on the person(s) listed on the attached Service List:

9

Plaintiff's NOTICE OF ENTRY OF JUDGMENT with the August 10, 2020 Writ of Mandamus and the September 30, 2022 Default Judgment on the 2<sup>nd</sup> and 3<sup>nd</sup> Causes of Action Quieting Title (14 pages not including this proof).

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U.S MAIL [CCP §§ 1013(a) & 2015.5]: by placing the document(s) listed above in a sealed envelope, with First Class postage thereon fully prepaid, and deposited the same in the United States mail at Orinda, California, addressed as set forth on the attached Service List. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing, which deposits mail to the US Postal Service on the same day, with postage fully prepaid in the ordinary course of business.

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E-MAIL OR FACSIMILE TRANSMISSION [CCP §§ 1010.6, 1013(e), 2015.5 & CRC 2008]: Based on court order or per agreement of the parties to accept service, I caused the documents to be sent to the listed persons at the e-mail or facsimile numbers listed on the attached Service List. I did not receive any error message or other indication that the transmission was unsuccessful. I am familiar with the firm's practices in this regard and the documents were transmitted in the regular course of business.

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27 28 OVERNIGHT DELIVERY [CCP §§ 1013(c) & 2015.5]: by placing the document(s) listed above in a sealed envelope marked next-day delivery by

**PERSONAL DELIVERY**: by personally delivering the document(s) listed above to the

(State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 18, 2022 at Orinda, California.

By

person(s) at the address(es) set forth on the Service List.

TRA JAMES HARE

PROOF OF SERVICE

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- 1 -

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Exhibit 3 || A-3-SCQ-23-0003

# SERVICE LIST

In re

Fowler Packing Company v. County of Santa Cruz Santa Cruz Superior Court Action No.19CV00673
Our File No. 1142.1

County of Santa Cruz	Daniel Zazueta Santa Cruz County Counsel 701 Ocean Street, Room 505 Santa Cruz, CA 95060	TC: (831) 454-2040 Fax: (831) 454-2115 E: daniel.zazueta@santacruzcounty.us
California Coastal Commission	Xavier Becerra David G. Alderson Joel S. Jacobs Attorney General of California 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550	TC: (510) 879-0279 Fax: (510) 622-2270 E: Joel.Jacobs@doj.ca.gov

# Elijah Mowbray, P.E.

591 Laurel Glen Road Soquel, CA 95073 {831} 419=9399 elijahmowbray@gmail.com

October 21, 2022

#### Nathan MacBeth

Santa Cruz County Planning Department 701 Ocean Street, 4th Floor Santa Cruz, CA 95060 Nathan.MacBeth@santacruzcounty.us

Subject: County Coastal Development Permit Application Number 201302 (70 Geoffroy Drive, "Repair of Slump Slide")

#### Dear Mr. MacBeth:

This correspondence pertains to item 3 on the Zoning Administrator Agenda for October 21, 2022, namely Santa Cruz County Coastal Development Permit (CDP) Application Number 201302, under which a private property owner seeks permanent authorization for a temporary emergency bluff retention project installed pursuant to Santa Cruz County Emergency Coastal Development Permit 201227. This project is located at APN 028-143-35, address is 70 Geoffroy Drive, at the blufftop and on the bluff face above Black's Beach (also known as Twin Lakes State Beach) in the Live Oak area of the County.

The purpose of this letter is to formally object to the staff recommendation to approve this CDP; the Zoning Administrator should not approve this development application because the development does **not** conform to the standards set forth in Santa Cruz County's certified Local Coastal Plan (LCP), nor does it comply with the public access policies of the California Coastal Act.

I grew up during the 1970's and 80's on 14th Avenue, just inland from the site location. We frequently used to walk between Black's Beach and Sunny Cove via Geoffroy Drive and, more specifically, the bluff slope which is the subject of this CDP. I graduated from Soquel High in 1989 and moved away to enroll at Cal Poly that same year. When I left town, I was still able to move between the beach and Geoffroy Drive via the project site. Eventually I graduated in Civil Engineering and moved to the Bay Area to begin my career. In 2003 I moved home to work for a local agency and I was shocked and dismayed to find that this access had been completely cut off.

The County should be working towards restoring this access. Sadly, it seems as if County staff do not share this goal, as the project as proposed does not maximize

public recreational access opportunities. On the contrary, it would essentially block and preclude any form of access here by installing a fence and adding a reinforced slope, which would greatly complicate the construction of proper access. The LCP explicitly requires the County to <u>maintain</u> a neighborhood public accessway at the end of Geoffroy Drive, reference LUP Policy 7.7.18:

Chapter 7: Parks, Recreation and Public Facilities

#### **NEIGHBORHOOD SHORELINE ACCESS DESIGNATIONS**

#### **Policies**

### 7.7.18 Areas Designated for Neighborhood Public Access

(LCP) Maintain a system of neighborhood access points appropriate for access by local residents at the following locations and other accesses as determined by the Board of Supervisors, subject to policy 7.6.2:

Live Oak Mid-County

at the end of the following streets:

7th Avenue end of Beachgate Way

12th Avenue Cliff Drive between Lamanda Drive and Bayview Drive

13th Avenue Shore Trail at Seaview Drive

Geoffrey Drive Sumner Avenue
Sunny Cove Avenue Hidden Beach
18th Avenue Via Concha
19th Avenue Via Gevicta

Further the LCP explicitly calls for an overlook/vista point to be developed with benches and railings at this location (LUP Program 7.7(c)):

(LCP) c. Develop and maintain vista points or overlooks with benches and railings at the end of Geoffrey Drive, and at various points along East Cliff Drive including Corcoran Lagoon, Moran Lake, the west end of Pleasure Point Drive, the promenade along East Cliff Drive between 32nd and 41st Avenues, at South Palisades, at the southern end of 41st Avenue, Seaview Drive and Baldwin Drive. (Responsibility: County Parks, Public Works, Board of Supervisors)

In place of these LCP-required provisions (none of which are addressed/provided for by the proposed project), the proposed project would block and otherwise prevent public access here. Accordingly, I do not believe that the proposed project can be found consistent with the Coastal Act or the LCP on these points.

In terms of the Coastal Act, Section 30210 requires that public recreational access opportunities be maximized, while respecting the rights of private property owners.6 Section 30211 prohibits development from interfering with the public's right of access to the sea (such as access to the beach here) if such rights were acquired through historical use. In approving new development, Section 30212 requires new development to provide access from the nearest public roadway (here Geoffroy Drive downcoast of the site) to the shoreline and along the coast (here to Black's Point Beach), save certain limited exceptions, such as when adequate access already exists (not the case from Geoffroy Drive to the beach). Section 30213 speaks to ensuring that free and low-cost options, such as the beach accessway in question here, are available to coastal visitors. And Sections 30220 through 30223 protect coastal areas suited for water-oriented activities, oceanfront land suitable for recreational use, and upland areas needed to support recreational uses, all of which are applicable in this case.

Similarly, the County's LCP also protects public recreational access including requiring maximized public use and enjoyment of coastal recreational resources, provision of shoreline and beach access to serve the public and coastal neighborhoods, encouraging access and connections between parks, and visual shoreline access (see, for example, LCP Land Use Plan (LUP) Objectives 7.7 a, b, and c, and LUP Policies 7.7.1, 7.7.6, 7.7.9, 7.7.10, and 7.7.11, Chapter 7 Land Use Programs a and b, and LUP Policies 7.7.18 and 7.7.19). Further, the LCP includes required CDP findings, and these include requiring that the project conform with the LUP's public access, recreation, and visitor-serving policies, that the project meets all other LCP provisions, and that project conform to the Chapter 3 policies of the Coastal Act.

Sincerely,

Elijah Mowbray

# **Zoning Administrator Minutes**

October 21, 2022

**Application Number 201302** 

**EXHIBIT 1E** 



# County of Santa Cruz Zoning Administrator Minutes

Planning Department, 701 Ocean Street, Suite 400, Santa Cruz, CA 95060

Meeting Date: Friday, October 21, 2022 @ 9:00 AM

Location: Board of Supervisors Chambers, Room 525

**County Government Center** 

701 Ocean Street Santa Cruz, CA 95060

# **Scheduled Items**

1. 221123

17337 Debbie Rd., Los Gatos 95033

APN: 093-272-04

Proposal to operate a four-bedroom residential vacation rental. Requires a vacation rental permit, and a determination that the proposal is exempt from further review under the California Environmental Quality Act (CEQA).

Property is located at 17337 Debbie Road in Los Gatos.

OWNER: Michelle Wang APPLICANT: Michelle Wang SUPERVISORIAL DIST: 5

PROJECT PLANNER: Michael Lam, (831) 454-3371

EMAIL: Michael.Lam@santacruzcounty.us

ACTION: Public Comment received at meeting. Zoning Administrator deferred decision to Planning Commission.

2. 201238

49 Shearwater Ln. Watsonville 95076

APN: 052-291-12

Proposal to demolish an existing 1,342 square foot residence and construct a new two-story, 2,200 square foot residence with attached garage located in the SU (Special Use) zone district. Requires approval of a Coastal Development Permit and Adoption of a Mitigated Negative Declaration per the requires of the California Environmental Quality Act (CEQA).

Property is located at 49 Shearwater Lane in Watsonville.

OWNER: Mark & Suzanne Cauwels

APPLICANT: Hamilton Land Planning attn: Deidre Hamilton

SUPERVISORIAL DIST: 1

PROJECT PLANNER: Nathan MacBeth, (831) 454-3118

EMAIL: Nathan.MacBeth@santacruzcounty.us

ACTION: Approved based on findings and conditions based on staff recommendations. Determined to be exempt from further review under the California Environmental Quality Act (CEQA).

3. 201302\*\*

70 Geoffroy Dr., Santa Cruz 95062

APN: 028-143-35

Proposal to recognize repair of a slump slide authorized under Emergency Coastal Development Permit 201227 by constructing a reinforced fill slope. Requires a Coastal Development Permit and

a determination that the proposal is exempt from further review under the California Environmental Quality Act (CEQA).

Project located at the south west end of Geoffroy Drive approximately 350 feet south west of the intersection with 16th Avenue in the Live Oak Planning Area (70 Geoffroy Drive).

OWNER: Mark & Suzanne Cauwels

APPLICANT: Hamilton Land Planning attn: Deidre Hamilton

SUPERVISORIAL DIST: 1

PROJECT PLANNER: Nathan MacBeth, (831) 454-3118

EMAIL: Nathan.MacBeth@santacruzcounty.us

ACTION: Public Comment received at meeting. Zoning Administrator deferred decision to Planning Commission

#### 4. 221273

485 Old Turnpike Rd., Los Gatos 95062

Proposal to demolish an existing 36.5 square foot deck and construct an approximately 240 square foot replacement deck, at an existing nonconforming single-family dwelling that is located approximately 4 feet from the edge of the right of way. Requires a variance to reduce the front yard setback from 40 feet to 18 feet 11 inches, and a determination that the proposal is exempt from further review under the California Environmental Quality Act (CEQA).

APN: 097-222-08

Property located on the east side of Old Turnpike Road, at the intersection of Darma Ridge Rd and Old Turnpike Road, in the RA zone district.

OWNER: Heidi & Robert Black

APPLICANT: Cade Bell SUPERVISORIAL DIST: 1

PROJECT PLANNER: Alexandra Corvello, (831) 454-3209

EMAIL: Alexandra.Corvello@santacruzcountv.us

ACTION: Zoning Administrator approved project. Determined to be exempt from further review under the California Environmental Quality Act (CEQA).

### APPEAL INFORMATION

Denial or approval of any permit by the Zoning Administrator is appealable to the Planning Commission. The appeal must be filed with the required appeal fee within 14 calendar days of action by the Zoning Administrator. To file an appeal you must write a letter to the Planning Commission and include the appeal fee. For more information on appeals, please see the "Planning Appeals" brochure located in the Planning Department lobby, or contact the project planner.

# **APPEALS OF COASTAL PROJECTS**

- (\*) This project requires a Coastal Zone Permit which is not appealable to the California Coastal Commission. It may be appealed to the Planning Commission; the appeal must be filed within 14 calendar days of action by the Zoning Administrator.
- (\*\*) This project requires a Coastal Zone Permit, the approval of which is appealable to the California Coastal Commission. (Grounds for appeal are listed in the County Code Section 13.20.110) The appeal must be filed with the Coastal Commission within 10 business days of receipt by the Coastal Commission of notice of local action. Denial or approval of the Coastal Zone Permit is appealable to the Planning Commission; the appeal must be filed within 14 calendar days of action by the Zoning Administrator.

Note regarding Public hearing items: If any person challenges an action taken on the foregoing matter(s) in court, they may be limited to raising only those issues raised at the public hearing described in this notice or in written correspondence delivered to the Zoning Administrator at or prior to the public hearing.

Agenda documents may be reviewed at the Planning Department, Room 420, County Government Center, 701 Ocean Street, Santa Cruz.

The County of Santa Cruz does not discriminate on the basis of disability, and no person shall, by reason of a disability, be denied the benefits of its services, programs, or activities. The Board of Supervisors chambers is located in an accessible facility. If you wish to attend this meeting and you will require special assistance in order to participate, please contact the ADA Coordinator at 454-3137 (TDD/TTY number is 711) at least 72 hours in advance of the meeting to make arrangements. People with disabilities may request a copy of the agenda in an alternative format. As a courtesy to those persons affected, please attend the meeting smoke and scent free.

# **Comments & Correspondence**

**Application Number 201302** 

**EXHIBIT 1F** 

### **Nathan MacBeth**

From: Sent: Joani Mitchell <joani.mitchell@gmail.com> Wednesday, November 30, 2022 10:28 AM Pat Veesart; Nathan MacBeth; Manu Koenig

To: Subject:

LOVE to have beach access at Geoffrey drive

\*\*\*\*CAUTION: This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

Hi Nat

Thanks for talking to me.

This is what I was talking about.

Can you tell me if there is any update on if possible to have the historic beach access stairs back or am I banging my Head since it will never happen?

Regaining Public Access to Twin Lakes Beach at Geoffrey Dr. Don't know if any of you are but we have filled out the forms and submitted them. Cheers, Joani



The Coastal Commission needs your help to reestablish our Geoffroy Drive beach access from Sunny Cove to Twin Lakes.

Reopen our Coastal Walkway from the Harbor to Pajaro River (on low tide)

https://www.coastal.ca.gov/access/prc-access.html
Please fill out this form and return to N. Patrick Veesart
Enforcement Supervisor
Northern Districts
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060
(831) 427-4863

"We have posted a new prescriptive rights study on our website for Geoffroy Drive in the Live Oak area of Santa Cruz (Twin Lakes State Beach). Since you have contacted us in the past regarding this access way, we would like to hear from you or anybody you know who has used this access way in the past."

Thanks.

The Coastal Commission needs your help to reestablish our Geoffroy Drive beach access from Sunny Cove to Twin Lakes.

# wittwer / parkin

### December 13, 2022

# VIA EMAIL

Planning Commission
Santa Cruz County Planning Department
701 Ocean Street, 4<sup>th</sup> Floor
Santa Cruz, CA 95060
c/o Nathan Macbeth (Nathan.MacBeth@santacruzcounty.us)

Re: Coastal Development Permit

70 Geoffroy Drive, Santa Cruz (APN 028-143-35)

December 14, 2022 Planning Commission Meeting; Item #7

Dear Members of the Commission:

This law firm represents Thomas W. Mader with respect to the above referenced project and we submit this letter opposing this project on his behalf. For the reasons stated below, we respectfully request that you deny the above referenced Coastal Development Permit ("CDP").

First and foremost, it is important for the Commission to understand that the applicant, and the adjacent property owners at 60 Geoffroy Drive have not only excluded the public from access to a historic public access to Blacks Beach, but have maximized the use of the coastal bluff in the vicinity by covering their properties with impervious surfaces and installing gabion baskets along the bluff that cause significant visual impacts. This application is an attempt by the applicants to bootstrap additional work into an emergency bluff repair, such as the construction of a fence that is visible from Blacks Beach. Below are specific objections to the CDP.

# A. A Coastal Development Permit May Be Granted Only When Outstanding Violations Have Been Resolved

As detailed in letters contained in your agenda packet from Rainey Graven and Patrick Veesart, Staff at the California Coastal Commission, the applicant has unresolved code violations on the property. County Code section 13.20.170, subsection (C), states as follows:

Development that is proposed for property on which there are existing unresolved coastal development permit violations shall only be approved and allowed if: (1) the approval resolves all such violations through its terms and conditions and (2) such resolution protects and enhances coastal resources, including that it results in a coastal resource condition that is as good or better than existed prior to the violations; or (3) the proposed development is necessary to ensure health and safety, in which case the approval for the

WITTWER PARKIN / 335 SPRECKELS DR., STE. H / APTOS, CA / 95003 / 831.429.4055

Planning Commission Re: 70 Geoffroy Drive, Santa Cruz December 13, 2022

Page 2

development shall specify that an application to resolve the unresolved coastal development permit violation(s) shall be made within 90 days of the approval.

Therefore, the CDP must be denied until the violations are resolved. Indeed, the applicant has been intransigent in resolving the violations. This Code provision requires resolution in order for any further CDPs to be issued.

# B. The Project Does Not Comply With the Local Coastal Permit Because the Fence and Work Causes Significant Visual Impacts

The Project is inconsistent with the Local Coastal Program's visual resource protections. The proposed project would be substantially visible from the beach, which raises LCP consistency issues including with respect to LUP Policies 5.10.2 "Development within Visual Resource Areas", and 5.10.7 "Open Beaches and Blufftops." LUP Policy 5.10.2 acknowledges the importance of visual resources and requires that projects be evaluated against their unique environment (i.e., the surrounding projects and natural context), and LUP Policy 5.10.7 prohibits the placement of new permanent structures that would be visible from the public beach except where allowed on existing parcels of record and "where compatible with the pattern of existing development," and "Require shoreline protection and access structures to use natural materials and finishes to blend with the character of the area and integrate with the landform."

The development proposed to be sanctioned by the CDP adds to the existing unnatural condition that has been caused by retention structures at 60 and 70 Geoffroy Drive and should not be permitted here. While the fence is ostensibly for safety, the fence is unnecessary and adds to the visual impacts. There is no need for the fence, other than the applicants' desire to ensure that the public is excluded.

### C. The Project is Not Exempt From CEQA

CEQA mandates that "the long term protection of the environment... shall be the guiding criterion in public decisions." Pub. Resources Code § 21001(d). The foremost principle under CEQA is that it is to be "interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 564; Friends of Mammoth v. Board of Supervisors (1972) 8 Cal. 3d 247; Mountain Lion Foundation v. Fish & Game Com. (1997) 16 Cal.4th 105, 112.) An agency's action violates CEQA if it "thwarts the statutory goals" of "informed decisionmaking" and "informed public participation." (Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 712.) While certain classes of projects that do not result in significant effects on the environment are categorically exempt from CEQA, "[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language." (Id. at 125.) As such, "a categorical exemption should be interpreted narrowly to

Planning Commission Re: 70 Geoffroy Drive, Santa Cruz December 13, 2022 Page 3

afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (Los Angeles Dept. of Water & Power v. County of Inyo (2021) 67 Cal.App.5th 1018, 1040.)

The burden is on the County to demonstrate that the exemption applies.

"[A categorical] exemption can be relied on only if a factual evaluation of the agency's proposed activity reveals that it applies." (Muzzy Ranch Co. v. Solano County Airport Land Use Com. (2007) 41 Cal.4th 372, 386....) "[T]he agency invoking the [categorical] exemption has the burden of demonstrating" that substantial evidence supports its factual finding that the project fell within the exemption. (Ibid.)

(Save Our Big Trees v. City of Santa Cruz (2015) 241 Cal. App. 4th 694, 710-712.)

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. (14 Cal. Code Regs. §15002(k); Committee to Save Hollywoodland v. City of Los Angeles (2008) 161 Cal. App. 4th 1168, 1185 86; San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist. (2006) 139 Cal. App. 4th 1356, 1372-1374 (San Lorenzo Valley).) First, if a project falls into an exempt category, no further agency evaluation is required. (Id.) Second, if there is a possibility a project will have a significant effect on the environment, the agency must perform a threshold initial study. (Id.; 14 Cal. Code Regs. § 15063(a).) If the initial study indicates that there is no substantial evidence that a project may cause a significant effect on the environment, then the agency may issue a negative declaration. (Id.; 14 Cal. Code Regs. §§ 15063(b)(2), 15070.) However, if a project may have a significant effect on the environment, an environmental impact report is required. (14 Cal. Code Regs. § 15063(b); San Lorenzo Valley, supra, 139 Cal. App. 4th at 1373-1374.) Thus, the analysis begins with whether the claimed exemptions apply.

Categorical exemptions are found in the CEQA Guidelines and include certain classes of projects which are exempt from CEQA based on the California Resources Agency's determination that such projects do not have a significant impact on the environment. (Pub. Resources Code § 21084; 14 Cal. Code Regs. §§ 15300 - 15354.) However, "[t]he [Resources Agency's] authority to identify classes of projects exempt from environmental review is not unfettered ... '[W]here there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper." (Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster Azusa (1997) 52 Cal.App.4th 1165, 1191 (quoting Wildlife Alive v. Chickering (1976) 18 Cal.3d 190, 205-206).) Indeed, "a categorical exemption should be construed in light of the statutory authorization limiting such exemptions to projects with no significant environmental effect." (Remy, et al., Guide to CEQA (11th ed. 2006) p. 136.)

Planning Commission Re: 70 Geoffroy Drive, Santa Cruz December 13, 2022 Page 4

Here, the Notice of Exemption attached to the Staff Report claims that the project is exempt under the Class 2 exemption for replacement or reconstruction of existing facilities, and the Class 3 exemption for new construction or conversion of small structures. 14 Cal. Code Regs. §§ 15302, 15303. The Class 2 exemption does not apply and the exceptions to the exemptions applies to the Class 3 exemption.

With respect to the Class 2 exemption, the project is beyond the scope of the exemption. Because the exemption must be interpreted narrowly, the existing facilities exemption does not apply. The project does not involve an existing facility. The claimed exemption cannot be utilized to legitimize emergency work that did not previously exist. The project did not exist but for the emergency authorization. It is not existing and must be analyzed as part of the permanent CDP. Moreover, the fence was unnecessary with respect to the emergency. Therefore, the County has not met its burden to claim the exemption.

As to the Class 3 exemption, the exception to the exemptions applies. CEQA provides for several exceptions to categorical exemptions and, if an exception applies, the exemption cannot be used, and the agency must instead prepare an initial study and perform environmental review. (McQueen v. Bd. of Dirs. (1988) 202 Cal.App.3d 1136, 1149; Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles, supra, 161 Cal. App. 4th at 1187.) CEQA Guidelines section 15300.2 implements the exceptions to the categorical exemptions. The Notice of Exemption erroneously claims that none of the conditions in 14 Cal. Code Regs. Section 15300.2 apply. However, pursuant to section 15300.2(a), the Class 3 exemption does not apply "where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies." Coastal bluffs are precisely the type of resource so designated in the Local Coastal Program.

For the foregoing reasons, the project is not exempt from environmental review. The failure of the County to address environmental concerns is a violation of CEQA and thwarts the very purpose of the statute.

The EIR is also intended "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." [Citation]. Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citation]. The EIR process protects not only the environment but also informed self-government.

Planning Commission Re: 70 Geoffroy Drive, Santa Cruz December 13, 2022 Page 5

Laurel Heights Improvement Assn. v. Regents of the University of California (1988) 47 Cal.3d 376, 392, emphasis added; see also Citizens of Goleta Valley v. Board of Supervisors, supra, 52 Cal.3d at 554; 14 Cal. Code Regs. § 15003.

Finally, Pursuant to Public Resources Code § 21167(f), I am requesting that the County forward a Notice of Exemption to this office if the Project is approved. That section provides:

If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 prior to the date on which the agency approves or determines to carry out the project, then not later than five days from the date of the agency's action, the public agency shall deposit a written copy of the notice addressed to that person in the United States mail, first class postage prepaid.

For the foregoing reasons, we request that you deny approval of the Project. Thank you for your consideration.

Very truly yours, WITTWER PARKIN

William P. Parkin

cc: Client

# Michael A. Guth Attorney at Law 2-2905 East Cliff Dr., Santa Cruz, CA 95062

Santa Cruz County Planning Department 701 Ocean Street Santa Cruz, CA 95060

December 13, 2022

Re: Application No. 201302

Hearing Date: December 14, 2022

APN: 028-143-35 Position: DENY

I am writing to express my opposition to approving this project as submitted and reviewed. The Coastal Development Permit Findings cannot be made. The project is not exempt from CEQA. There are ongoing public pedestrian access issues at this location which are not given proper consideration in the County staff analysis.

Most neighborhoods in the mid-County coastal area enjoy a balance of public access, public viewing areas, and of course private properties. One can walk, at a very low tide and when sand is plentiful, from Capitola to the Santa Cruz Harbor. In a few locations one must climb up the bluff to walk along the first coastal road, and then back down to continue on. There is only one location that interferes with this trek: Geoffrey Lane. This is the one location where the Coastal Act mandates are flaunted. There used to be access here, and the County itself has identified the present parcel as that location.<sup>1</sup>



Blockage location is at the west end of Geoffrey Lane at Black's Beach; Access up from Sunny Cove to east end of Geoffrey Lane, but then cannot rejoin beach at west end.

The community has been trying to regain its prior access at this end of Geoffrey Lane since its blockage.

# **Coastal Development Permit Findings**

<sup>&</sup>lt;sup>1</sup> County of Santa Cruz Staff Report to the Zoning Administrator; dated January 16, 2009; Agenda packet page 4

# Michael A. Guth Attorney at Law

Coastal Development Permit Findings 2, 3, 5, and 6 cannot be made. These findings relate to easements (2), public access (4), other applicable LCP standards (5), and public access and public recreation (6).

During review of a proposed development on an adjacent parcel in 2008/9, the County itself stated that "(t)he pedestrian easement is most likely located on assessor's parcel number 028-143-35". That is the parcel now being reviewed. The specific identification of this parcel as the location of a pedestrian easement is now ignored in the current analysis. This circumstance renders it impossible to make Coastal Development Permit Findings 2, 3, 5, and 6.

Applicant's protestations at the Zoning Administrator Hearing about the finality of the access issue as a result of recent court cases should be disregarded. The court cases regarding the public access and easement issue should not be viewed as complete.

# **Outstanding Violations**

The California Coastal Commission letter clearly identifies open and unresolved Coastal Commission enforcement cases against this parcel.<sup>3</sup> It is simply impossible to reconcile the granting of a new Coastal Development Permit with the circumstance of these open violations.

# **CEQA**

This project does not qualify for a CEQA exemption. The Notice of Exemption<sup>4</sup> designates two categories of Categorical Exemption. Neither exemption withstands scrutiny. Class 2 does not apply as these are new facilities, not Existing Facilities. This is not an in-kind replacement of a bluff stabilization scheme. Class 3 might have applied, but due to the location of this project on the coastal bluff, an exception to the exemption applies. Coastal bluffs such as this project location are an environmental resource of critical concern – one need look no further than the years of coastal bluff resource work done on the recently proposed Santa Cruz County LCP amendments to substantiate that. Thus, a Class 3 exemption does not apply. The County must utilize at least an Initial Study under CEQA.

### Summary

This project should not be approved as presented. The project must undergo CEQA review. The open violations must be addressed. The community has been waiting years for action on the blockage of the Geoffrey Lane beach access, and the access issue cannot be ignored in this present application review.

<sup>&</sup>lt;sup>2</sup> County of Santa Cruz Staff Report to the Zoning Administrator; dated January 16, 2009; Agenda packet page 4

<sup>&</sup>lt;sup>3</sup> County of Santa Cruz staff report; dated December 1, 2022; Agenda packet page 227

<sup>&</sup>lt;sup>4</sup> County of Santa Cruz staff report; dated December 1, 2022; Agenda packet page 3

Michael A. Guth Attorney at Law

Thank you for your consideration of these comments.

Michael A. Guth

Muhael Luth

# Elijah Mowbray, P.E.

591 Laurel Glen Road Soquel, CA 95073 {831} 419=9399 elijahmowbray@gmail.com

October 21, 2022

#### Nathan MacBeth

Santa Cruz County Planning Department 701 Ocean Street, 4th Floor Santa Cruz, CA 95060 Nathan.MacBeth@santacruzcounty.us

Subject: County Coastal Development Permit Application Number 201302 (70 Geoffroy Drive, "Repair of Slump Slide")

# Dear Mr. MacBeth:

This correspondence pertains to item no. 7 on the Planning Commission Agenda for December 14, 2022, namely Santa Cruz County Coastal Development Permit (CDP) Application Number 201302, under which a private property owner seeks permanent authorization for a temporary emergency bluff retention project installed pursuant to Santa Cruz County Emergency Coastal Development Permit 201227. This project is located at APN 028-143-35, 70 Geoffroy Drive, at the blufftop and on the bluff face above Black's Beach (also known as Twin Lakes State Beach) in the Live Oak area of the County.

The purpose of this letter is to formally object to the staff recommendation to approve this CDP; the Planning Commission should not approve this development application because the development does **not** conform to the standards set forth in Santa Cruz County's certified Local Coastal Plan (LCP), nor does it comply with the public access policies of the California Coastal Act.

I grew up during the 1970's and 80's on 14th Avenue, just inland from the site location. We frequently used to walk between Black's Beach and Sunny Cove via Geoffroy Drive and, more specifically, the bluff slope which is the subject of this CDP. I graduated from Soquel High in 1989 and moved away to enroll at Cal Poly that same year. When I left town, I was still able to move between the beach and Geoffroy Drive via the project site. Eventually I graduated in Civil Eingineering and moved to the Bay Area to begin my career. In 2003 I moved home to work for a local agency and I was shocked and

dismayed to find that this access had been completely cut off.

The County should be working towards restoring this access. Sadly, it seems as if County staff do not share this goal, as the project as proposed does not maximize public recreational access opportunities. On the contrary, it would essentially block and preclude any form of access here by installing a fence and adding a reinforced slope, which would greatly complicate the construction of proper access. The LCP explicitly requires the County to maintain a neighborhood public accessway at the end of Geoffroy Drive, reference LUP Policy 7.7.18:

Chapter 7: Parks, Recreation and Public Facilities

#### NEIGHBORHOOD SHORELINE ACCESS DESIGNATIONS

#### **Policies**

#### 7.7.18 Areas Designated for Neighborhood Public Access

(LCP) Maintain a system of neighborhood access points appropriate for access by local residents at the following locations and other accesses as determined by the Board of Supervisors, subject to policy 7.6.2:

Live Oak Mid-County at the end of the following streets: end of Oakdale Drive end of Beachgate Way

12th Avenue Cliff Drive between Lamanda Drive and Bayview Drive

13th Avenue Shore Trail at Seaview Drive

Geoffrey Drive Sumner Avenue
Sunny Cove Avenue Hidden Beach
18th Avenue Via Concha
19th Avenue Via Gevicts

Further the LCP explicitly calls for an overlook/vista point to be developed with benches and railings at this location (LUP Program 7.7(c)):

(LCP) c. Develop and maintain vista points or overlooks with benches and railings at the end of Geoffrey Drive, and at various points along East Cliff Drive including Corcoran Lagoon, Moran Lake, the west end of Pleasure Point Drive, the promenade along East Cliff Drive between 32nd and 41st Avenues, at South Palisades, at the southern end of 41st Avenue, Seaview Drive and Baldwin Drive. (Responsibility: County Parks, Public Works, Board of Supervisors)

In place of these LCP-required provisions (none of which are addressed/provided for by the proposed project), the proposed project would block and otherwise prevent public access here. Accordingly, I do not believe that the proposed project can be found consistent with the Coastal Act or the LCP on these points.

In terms of the Coastal Act, Section 30210 requires that public recreational access opportunities be maximized, while respecting the rights of private property owners. Section 30211 prohibits development from interfering with the public's right of access to the sea (such as access to the beach here) if such rights were acquired through historical use. In approving new development, Section 30212 requires new development to provide access from the nearest public roadway (here Geoffroy Drive downcoast of

the site) to the shoreline and along the coast (here to Black's Point Beach), save certain limited exceptions, such as when adequate access already exists (not the case from Geoffroy Drive to the beach). Section 30213 speaks to ensuring that free and low-cost options, such as the beach accessway in question here, are available to coastal visitors. And Sections 30220 through 30223 protect coastal areas suited for water-oriented activities, oceanfront land suitable for recreational use, and upland areas needed to support recreational uses, all of which are applicable in this case.

Similarly, the County's LCP also protects public recreational access including requiring maximized public use and enjoyment of coastal recreational resources, provision of shoreline and beach access to serve the public and coastal neighborhoods, encouraging access and connections between parks, and visual shoreline access (see, for example, LCP Land Use Plan (LUP) Objectives 7.7 a, b, and c, and LUP Policies 7.7.1, 7.7.6, 7.7.9, 7.7.10, and 7.7.11, Chapter 7 Land Use Programs a and b, and LUP Policies 7.7.18 and 7.7.19). Further, the LCP includes required CDP findings, and these include requiring that the project conform with the LUP's public access, recreation, and visitor-serving policies, that the project meets all other LCP provisions, and that project conform to the Chapter 3 policies of the Coastal Act.

Following is a summary of issues I have on this matter.

- First and foremost, it is an absolute fact that I used the access from Black's Beach to Geoffroy Dr. countless times growing up on 14th Ave in the 1970's and 80's. We would regularly switch back and forth between Black's and Sunny Cove, and onward to Santa Mo's. Thus historically access did exist at this location.
- 2. The historic use of this coastal access is supported by a good deal of additional evidence, including, but not limited to, the following:
  - a. Other testimony from local residents, past and current.
  - b. The statements from previous owners (included in the packet material) who deliberately terminated public access purely out of perceived self interest.
  - c. The County General Plan / LCP, prepared in 1995, which lists this access way "to be **maintained**." Only an <u>existing</u> access way is maintained, thus it can be inferred that public access was open when this document was prepared.
  - d. The County General Plan / LCP, prepared in 1995 specifically designates this access way for improvement as a Coastal Overlook. If the access way was not in use, why would it be designated as such?
- 3. Beginning on page 40 of your staff agenda packet, please reference the detailed correspondence from Rainey Graeven, Coastal Planner with the Coastal Commission. I endorse and support the positions outlined in this correspondence which enumerate many instances where this permit should **not** be approved due to its non conformance with the LCP and the Coastal Act. It is very disappointing that to my understanding neither the property owner(s) nor County Staff engaged in serious discussion of the issues raised in this correspondence.

4. It is my belief that this access should be open to the public due to its historic use and associated vested rights. However, my overarching goal is simply to see access at this location open to the public. Therefore, it seems prudent to consider alternative means such as the procurement of a coastal access easement. Please reference County Code Chapter 15.05 TRAIL AND COASTAL ACCESS DEDICATION, STANDARDS AND REVIEW. I do not believe the requirements of this code have been properly followed with regard to this permit application. For instance, and as shown below, County Code Section 15.05.050 requires, as a condition of approval for any permit, the dedication of an easement "to implement the General Plan or the Local Coastal Program." County Code Section 15.05.070 specifically includes the dedication requirement at any "location appropriate for neighborhood shoreline access in the Local Coastal Program."

#### 15.05.050 Trail and coastal access dedication.

C SHARE

Trail and Coastal Access Dedication. As a condition of approval for any permit for a residential, commercial, or industrial project, an owner shall be required to dedicate an easement for trail or coastal access if necessary to implement the General Plan or the Local Coastal Program Land Use Plan, and only if the requirement for dedication complies with California Government Code Sections 65909(a) and 66475.4(b), and 66478.1 et seq. for land divisions. [Ord. 5372 § 4, 2021].

- 5. Note that such a public access easement would almost entirely overlap other existing easements. And where it does not on the bluff slope there is no possibility of developing anything. Thus a public access easement would not reduce the actual buildable area in any of the properties in question. The impact of this easement would be almost negligible on these properties.
- 6. The proposed emergency permit work would in fact make construction / development of access more difficult. This bluff repair created at least three work elements which conflict with the construction of public access down the bluff face:
  - a. The fence at the top of the bluff.
  - b. The at grade drainage pipe which travels down the face of the bluff.
  - c. The reinforced earth soil reinforcing grids which are included throughout the new embankment. These grids can complicate any required grading and the installation of any footings.
- 7. I have disagreements or concerns about some of the information presented in the County staff report for this application. It seems clear that the staff report is not objectively considering the public access issues. Instead the report advocates against any consideration of public access to the beach. In specific, please note the following:
  - a. Staff states unequivocally that public access exists 200 feet east of the project location. This is simply not true. There is an undeveloped access to the rocky shelf approximately 300 feet east of here, but this is not relevant as it does not provide access to Black's Beach. Therefore, it does not connect these beaches with lateral access. This statement is even included in the required findings for project approval and it should not be.
  - For some reason, the staff report attempts to muddy the waters by claimin there
    is uncertainty regarding the exact location of the neighborhood access point.
    Again, this is simply not true. Access at "the end of Geoffroy Dr" per County

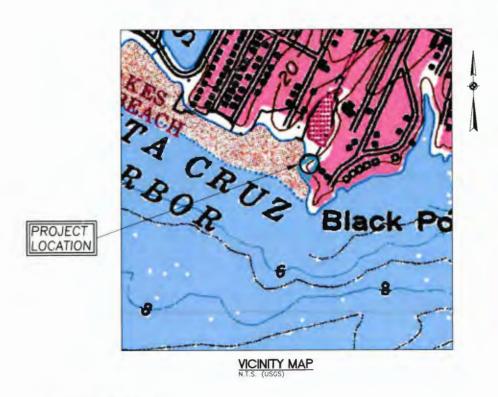
- GP/LCP is via the slope at this parcel. There is absolutely zero doubt about it because the access existed for many years. And there is no other way to reach the beach/
- c. Staff states multiple times that the scope of this project does not include public access. These statements are without merit. If this logic prevails, then no permit would ever include provisions for public access; property owners do not seek to include public access work in their project scope, yet sometimes they must include an offer to dedicate an easement, or even include work elements required to resolve an outstanding Coastal Commission violation. You can decide what the final scope includes.
- 8. I would like to make an honest plea to the County of Santa Cruz: join us and work to preserve / develop this important public coastal access. And let me draw your attention to an action of a recent owner which is quite illuminating. Mr. Skylar freely admits that he hired private security guards to enforce his termination of access. If public access was essentially non-existant at the time, as they claim, why would it be necessary to post private security guards? The reality is that this was a well used public access point and local folks were actively working to counteract the deplorable efforts of this property owner. They were only forced to concede due to the presence of these security forces.
- 9. Which leads to my final plea, this time to the relevant property owners. Please reconsider your course of action. Think about other local residents and the impact of the loss of this access. Join us and let's work together to develop safe and useful coastal access. Change course and embrace your neighbors and fellow residents, turn away from the path of intolerance, elitism, fear, and narrow minded self interest. Join our community and become good neighbors.

Thanks for your consideration in this matter.

Sincerely,

Elijah Mowbray, P.E. RCE No. 70111

# 70 GEOFFROY DRIVE EMERGENCY REINFORCED FILL SLOPE ROAD REPAIR 100% DESIGN PLAN





- C1 TITLE SHEET
  C2 GRADING SITE PLAN AND SECTIONS
  C3 EROSION CONTROL PLAN

### **GENERAL NOTES**

- 1. TOPOGRAPHIC MAPPING WAS PERFORMED BY: BOWMAN AND WILLIAMS 3949 RESEARCH PARK COURT, SUITE 100 SOQUEL, CA 95073 PROJECT DATE: 11 MARCH 2020 PROJECT NO.: 27908
- 2. ELEVATION DATUM: SANTA CRUZ COUNTY DATUM BENCHMARK NO. 8, LOCATED 1' NE OF ARNOLD M. BALDWIN DEDICATION PLAQUE TO THE LANDS AROUND SCHWAN LAKE.
- 3. BASIS OF BEARINGS: REFER TO BOWMAN AND WILLIAMS TOPOGRAPHIC PLAN.
- 4. CONTOUR INTERVAL IS ONE FOOT. ELEVATIONS AND DISTANCES SHOWN ARE IN DECIMAL FEET.
- 5. SOILS REPORT PREPARED BY SOILS REPORT PREPARED BY: HARO, KASUNICH AND ASSOCIATES, INC. 116 EAST LAKE AVE. WATSONVILLE, CA 95076 PROJECT NO.; SC5342.2
- 6. ALL CONSTRUCTION AND MATERIALS SHALL CONFORM TO THE 2018 EDITION OF THE STATE OF CALIFORNIA STANDARD SPECIFICATIONS, ISSUED BY THE DEPARTMENT OF TRANSPORTATION (HEREAFTER REFERRED TO AS "STANDARD SPECIFICATIONS").
- 7. ALL WORK INDICATED ON THE PLANS SHALL CONFORM WITH THE FOLLOWING CODES; 2019 CBC, CAL GREEN, AND SCMC TITLE 18.



# **ABBREVIATIONS**

AVERAGE
CONCRETE
CUBIC YARDS
DIAMETER
EXISTING
EXISTING GROUND
ELEVATION
FINISHED GRADE
FEET
GRATE
INVERT INVERT
INCH
MINIMUM
NEW
NOT TO SCALE
ON CENTER
SQUARE FOOT
TREE
TO BE DETERMINED
TYPICAL

#### PROJECT DESCRIPTION

THESE DRAWINGS PROVIDE 100% DESIGN LEVEL DETAILS FOR THE REPAIR OF A LANDSLIDE WITH NEW REINFORCED EARTH FILL SLOPE. WORK SHALL CONSIST OF CONSTRUCTING A 1.4:1 GEOGRID REINFORCED EARTH FILL SLOPE FROM THE TOP OF ROADWAY DOWN TO THE PROPERTY LINE, AND RE-ESTABLISHING SURFACE RUNOFF DRAINAGE.

### SECTION AND DETAIL CONVENTION

REFERENCE SHEET FROM WHICH DETAIL OR SECTION IS TAKEN.

REFERENCE SHEET ON WHICH SECTION OR DETAIL IS SHOWN

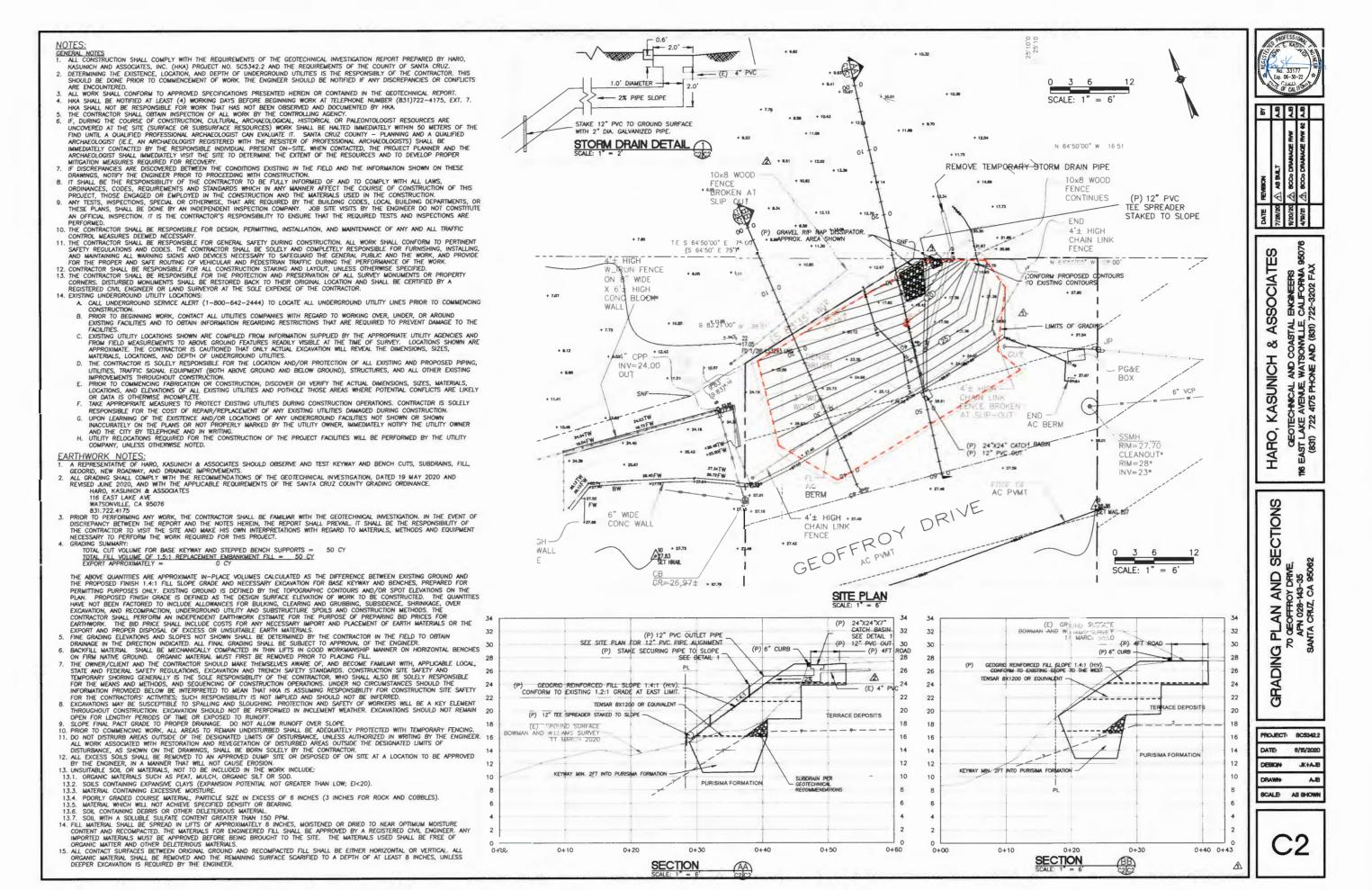


_	REVISION NOTES	Ā
7/28/20	A AS BULT	AJB
1/20/20	A BOCO DRAMAGE RW	8°Y
4/19/21	BCCo DRANAGE RWW #2	8°Y

& ASSOCIATES HARO, KASUNICH

TITLE SHEET
70 GEOFFROY DRIVE.
APN 028-143-35
SANTA CRUZ, CA 95062

PROJECT: 8C5342.2 JK+AJB SCALE: AS SHOWN



#### SPECIAL TESTS AND INSPECTION SCHEDULE

THE FOLLOWING ITEMS SHALL BE INSPECTED. "SPECIAL INSPECTION" SHALL CONFORM TO 2016 CBC 1704.7. SPECIAL INSPECTION AGENCIES AND/OR INOIVIDUALS SHALL BE RETAINED BY THE OWNER AND APPROVED BY THE BUILDING OFFICIAL PRIOR TO ANY WORK, FOR MATERIAL TESTING REQUIREMENTS. SEE SPECIFICATIONS AND/OR GENERAL NOTES. TESTING AGENCY SHALL SEND COPIES OF ALL STRUCTURAL TESTING AND INSPECTION REPORTS DIRECTLY TO THE BUILDING OFFICIAL AND ENGINEER.

	REQ.	REMARKS	
KEYWAY AND BENCH EXCAVATIONS	YES	BY SOIL ENGINEER / PERIODIC	
SUBGRADE /FINISH GRADE PREPARATION	YES	BY SOIL ENGINEER / PERIODIC	_
CLASSIFICATION OF FILL MATERIAL	YES	BY SOIL ENGINEER / PERIODIC	
OBSERVATION OF FILL MATERIAL/MECHNICAL TAMPING	YES	BY SOIL ENGINEER / PERIODIC	

SOILS ENGINEER TO PROVIDE OBSERVATION DURING GRADING AND FOUNDATION PHASE OF CONSTRUCTION HARO KASUNICH AND ASSOCIATES 831-722-4175, EXT 104

DRAINAGE	E MAINTENANCE	AND INSPECTION SC	HEDULE
THE FOLLOWING ITEMS (SEPTEMBER), AFTER THE	WINTER SEASON		
DRAINAGE STRUCTURE	BY	MAINTANENCE	SIGNS OF FAILUE

PROCEDURE PONDING WATER AND STORM DRAIN INLET BO OWNER(S) CLEAN **OVERTOPPING** TEE SPREADER OWNER(S) OBSERVATION EROSION RUNNELS

**LEGEND** 

100

EXISTING CONTOURS PROPOSED CONTOURS

 $\triangle^2$ 

SURVEY CONTROL POINT

EXISTING FENCE

EXISTING SANITARY SEWER LINE

EXISTING ELECTRICAL

EXISTING STORM DRAIN LINE

~^^^

FIBER ROLL PROPERTY LINE

DISTURBANCE AREA AREA = 530 SF

2

REMOVE TEMPORARY STORM DRAIN ABOVE

REPLACE WITH NEW 12" PVC AND TEE SPREADER AT PROPERTY LINE. GRAVEL RIP RAP DISSIPATOR T \_\_SNF-INSTALL FIBER ROLL LIMITS OF GRADING A INSTALL CATCH BASIN FILTER INSTALL PERMANENT NOPTH AMERICAN GREEN C145BN EROSION CONTROL BLANKET ACROSS STATE OF THE PERMANENT ACROSS STATE OF THE PERMAN GEOFFROY DRIV'F

EROSION CONTROL PLAN

EROSION CONTROL NOTES

1 BETWEEN OCTOBER 15 AND APRIL 15, EAPOSED SOIL SHALL BE PROTECTED FROM EROSION AT ALL TIMES DURING CONSTRUCTION, SUCH PROTECTION MAY BETWEEN OCTOBER 15 AND APRIL 15, EXPOSED SOIL SHALL BE PROTECTED FROM EROSION AT ALL TIMES DURING CONSTRUCTION, SUCH PROTECTION MAY CONSIST OF MULCHING AND/OR PLANTING OF NATIVE VEGETATION OF ADEQUATE DENSITY. BEFORE COMPLETION OF THE PROJECT, ANY EXPOSED SOIL ON DISTURBED SLOPES SHALL BE PERMANENTLY PROTECTED FROM EROSION.

2 A STANDBY CREW FOR EMERGENCY WORK SHALL BE AVAILABLE AT ALL TIMES DURING THE RAINY SEASON (OCTOBER 15 THROUGH APRIL 15). NECESSARY MATERIALS SHALL BE AVAILABLE AND STOCKPILED AT CONVENIENT LOCATIONS TO FACILITATE RAPID CONSTRUCTION OF TEMPORARY DEVICES.

3. THE CONTRACTOR SHALL INCORPORATE ADEQUATE DRAINAGE PROCEDURES DURING THE CONSTRUCTION OF TEMPORARY DEVICES.

4. THE CONTRUCTION PROCESS TO ELIMINATE EXCESSIVE PONDING AND EROSION.

5. CONSTRUCT AND MAINTAIN EROSION CONTROL MEASURES FROM DISTURBED AREAS UNDER CONSTRUCTION AND FROM COMPLETED CONSTRUCTION ARD FROM COMPLETED CONSTRUCTION AND FROM COMPLETED CONSTRUCTION AND FROM COMPLETED CONSTRUCTION AND FROM COMPLETED CONSTRUCTION ARD FROM THE FIVE—DAY RAIN PROBABILITY FOULDS OR EXCEEDS SO PERCENT AS DETERMINED FROM THE NATIONAL WEATHER SERVICE FORECAST OFFICE: WWW.SRH-NOAA.GOV.

5 AFTER A RAINSTORM, ALL SILT AND DEBRIS SHALL BE REMOVED FROM INLETS, CATCH BASINS, SILT FENCES, FIBER ROLLS, ETC. AND INSPECTED FOR ANY DAMAGE.

7 THE CONTRACTOR IS RESPONSIBLE TO KEEP IN FORCE ALL EROSION CONTROL DEVICES AND TO MODIFY THOSE DEVICES AS SITE PROGRESS DICTATES.

8 THE CONTRACTOR SHALL MONTOR THE EROSION CONTROL DEVICES DURING STORMS AND MODIFY THEM IN ORDER TO PREVENT PROGRESS OF ANY ONGOING EROSION.

9 THE CONTRACTOR SHALL BE FAMILLAR WITH THE CONDITIONS OF APPROVAL OF ALL

SPILLING ONTO A PUBLIC STREET 10 CONTRACTOR SHALL BE FAMILIAR WITH THE CONDITIONS OF APPROVAL OF ALL

10 CONTRACTOR SHALL BE FAMILIAR WITH THE CONDITIONS OF APPROVAL OF ALL REQUIRED BMP'S PRIOR TO COMMENCING GRADING OPERATIONS.

11. EROSION AND SEDIMENT CONTROL BMPS SHALL BE IN PLACE AND IMPLEMENTED, AS APPROPRIATE, PRIOR TO COMMENCING GRADING OR VEGETATION REMOVAL. THESE MEASURES SHALL BE MAINTAINED ON ALL DISTURBED AREAS IN ORDER TO MINIMIZE THE RELEASE OF SEDIMENT IN A SITE'S STORM WATER DISCHARGE.

12. PROTECT AND PRESERVE TOPSOIL TO MINIMIZE EROSION AND RETAIN INFILTRATION CONSIDER.

13. MINIMIZE LAND DISTURBANCE SUCH AS CUTS AND FILLS. STABILIZE SLOPES AND ALL DISTURBED AREAS AS SOON AS GRADING IS FINISHED OR CUT-AND-FILLS ARE

MADE.

11 COVER BARE SOILS AND SLOPES AS SOON AS POSSIBLE. USE ONE OR MORE OF THE FOLLOWING TO REDUCE THE EROSION POTENTIAL FROM BARE, EXPOSED, OR DISTUPBED SOIL: ROLLED EROSION CONTROL PRODUCTS (E.G. FILTER FABRIC, EROSION CONTROL BLANKETS, GEOTEXTILES), HYDRAULIC MULCH OR HYDROSEEDING, STRAW OR WOOD MULCH, SEEDING, VEGETATION PLANTING, OR OTHEP APPROPRIATE

15 ESTABLISH A UNIFORM VEGETATIVE COVER WITH A MINIMUM OF 70 PERCENT

15 ESTABLISH A UNIFORM VEGETATIVE COVER WITH A MINIMUM OF 70 PERCENT COVERAGE.
16 PROPERLY INSTALL AND MAINTAIN ALL ON-SITE EROSION CONTROL MEASURES AND STRUCTURAL DEVICES, BOTH TEMPORARY AND PERMANENT, PROMPTLY REPAIR OR PEINSTALL ANY EROSION CONTROL MEASURES AND STRUCTURAL DEVICES THAT WERE DAMAGED DURING CONSTRUCTION AND MAINTAIN THEM SO THAT THEY DO NOT BECOME NUISANCES WITH STAGNANT WATER, ODORS, INSECT BREEDING, HEAVY

ALGAE GROWTH, DEBRIS, AND/OP SAFETY HAZARDS.

17 A QUALIFIED PERSON SHOULD CONDUCT INSPECTIONS OF ALL ON—SITE BMPS
DURING EACH RAINSTORM, IF POSSIBLE, AND AFTER A STORM IS OVER TO ENSURE
THAT THE BMPS ARE FUNCTIONING PROPERLY.

SEDIMENT CONTROL NOTES:

LIMENI CONTROL NOTES:
USE FIBER ROLLS DOWNSLOPE AS PEPIMETER CONTROL TO PREVENT SEDIMENT FROM LEAVING THE SITE DURING THE WINTER SEASON. FIBER ROLLS ARE APPROPRIATE IN COMBINATION WITH EROSION CONTROL COVER ON SLOPES TO SHORTEN SLOPE LENGTH AND SPREAD RUNDFY AS SHEET FLOW.
SILT FENCES ARE NOT APPROPRIATE IN CONCENTRATED RUNOFF FLOW AREAS

(STREAMS, SWALES, GULLIES, ETC.). IN AREAS WHERE FLOODING IS A CONCERN, OR

LONG-TERM SEDIMENT CONTROL MEASURES ARE REQUIRED TO ENSURE THAT EROSION AND SEDIMENTATION DO NOT BECOME AN ISSUE ONCE THE PROJECT IS COMPLETED THE FOLLOWING MEASURES CAN BE EFFECTIVE FOR LONG TERM SEDIMENT CONTROL ONCE THE PLANTINGS AND ROOTS HAVE GROWN TO SUFFICIENT

SIZE:
31. SEEDING SLOPES BY HYDRO-SEEDING OR WITH SEEDED BLANKETS; PREFERABLY USING NATIVE SEEDS WITH WINTER BAPLEY OR OATS.
3.2. LANDSCAPING WITH PLANT SPECIES THAT GROW RAPIDLY AND HAVE ROOT SYSTEMS THAT ARE EFFECTIVE AT "HOLDING" SOIL

CHA

DUST CONTROL NOTES

1 THE CONTROL SHALL BE PESPONSIBLE FOR CONTINUOUS DUST CONTROL,
THROUGHOUT THE CONSTRUCTION, IN ACCORDANCE WITH THE PERMIT CONDITIONS
OF APPROVAL THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REGULAR
CLEANING OF ALL MUD, DIRT, DEBRIS, ETC., FROM ANY AND ALL ADJACENT POADS
AND SIDEWALKS, AT LEAST ONCE EVERY 24 HOURS WHEN OPERATIONS ARE
OCCURRENCE.

OCCURRING.
ALL DISTURBED AREAS, INCLUDING UNPAVED ACCESS ROADS OR STORAGE PILES, NOT BEING ACTIVELY UTILIZED FOR CONSTRUCTION PURPOSES, SHALL BE EFFECTIVELY STABILIZED OF DUST EMISSIONS USING WATER, CHEMICAL STABILIZER/SUPPRESSANT, OR VEGETATIVE GROUND COVER.

STABLIZERY SUPPRESSANT, OR VEGETATIVE GROUND COVER.

ALL GROUND-DISTURBING ACTIVITIES (E.G., CLEARING, GRUBBING, SCRAPING, AND EXCAVATION) SHALL BE EFFECTIVELY CONTROLLED OF FUGITIVE DUST EMISSIONS UTILIZING APPLICATION OF WATER OR BY PRE-SOAKING.

MATERIALS TRANSPORTED OFFSITE SHALL BE COVERED OR EFFECTIVELY WETTED TO LIMIT DUST EMISSIONS.

FOLLOWING THE ADDITION OF MATERIALS TO, OR THE PEMOVAL OF MATERIALS FROM, THE SURFACES OF OUTDOOR STORAGE PILES, SAID PILES SHALL BE EFFECTIVELY STABILIZED OF FUGITIVE DUST EMISSIONS UTILIZING SUFFICIENT WATER OR CHEMICAL STABILIZER/SUPPRESANT.

STABILIZERY SUPPRESANT.
ONSITE VEHICLE SPEED ON UNPAVED SUPFACES SHALL BE LIMITED TO 10 MPH.
DISTURBED AREAS SHALL BE SEEDED PRIOR TO OCTOBER 15TH OR EARLIER AS
REQUIRED BY THE APPLICABLE PERMIT CONDITIONS.

SITE HOUSEKEEPING NOTES

GUIPMENT AND VEHICLE MAINTENANCE AND CLEANING

I. INSPECT EQUIPMENT AND VEHICLES FREQUENTLY AND REPAIR ANY LEAKS AS SOON
AS POSSIBLE CONTAIN AND CLEAN UP LEAKS, SPILLS, AND DRIPS OF HAZARDOUS
MATERIALS AND CHEMICALS AS QUICKLY AS POSSIBLE TO MINIMIZE RUN-OFF OP
SOAK IN. THIS INCLUDES FUEL AND MOTOR OIL, HYDRAULIC FLUID, AND GLYCOL
BASED ANTI-FREEZE FROM VEHICLES. USE DRY CLEANUP METHODS IF POSSIBLE.
PERFORM MAJOR MAINTENANCE AND REPAIRS OFF-SITE.

PERFORM MAJOR MAINTENANCE AND REPAIRS OFF-SITE.

IF REPAIP OR REFUELING OF VEHICLES AND EQUIPMENT MUST BE DONE ON-SITE,

USE A DESIGNATED LOCATION AWAY FROM STORM DRAIN INLETS, WATER BODIES,

AND OTHER SENSITIVE AREAS.

IF EQUIPMENT IS WASHED ON-SITE, WASH WATER MAY NOT BE DISCHARGED TO THE

STORM DRAIN SYSTEM. IF POSSIBLE, WASH VEHICLES AT AN APPROPRIATE OFF-SITE

FACILITY.

4 RECYCLE USED MOTOR OIL, OTHER VEHICLE FLUIDS, AND VEHICLE PARTS WHENEVER

MATERIAL STORAGE AND SOIL STOCKPILES

LOCATE MATERIAL AND SOIL STOCKPILES AWAY FROM GUTTEPS, STORM DRAIN INLETS, AND WATER BODIES. IN ADDITION, KEEP STOCKPILES AWAY FROM STEEP SLOPES AND UNSTABLE SOIL IN ORDER TO MINIMIZE THE CHANCE OF AN ACCIDENTAL RELEASE TO THE ENVIRONMENT.

6. ALL LOOSE STOCKPILED MATERIAL THAT ARE NOT BEING ACTIVELY USED, SHALL BE UNDER COVER AND/OR BERMED AND PROTECTED FROM WIND, RAIN, AND RUNOFF. STORE OPEN BAGS OF PAPTICULATE, GRANULAR, OR POWDER MATERIALS (SUCH AS

PLASTER OR CONCRETE INDOORS IF POSSIBLE. IF STORED OUTSIDE, THEY MUST BE COVERED OR CLOSED, AND DURING THE RAINY SEASON THEY MUST BE KEPT WITHIN SECONDARY CONTAINMENT.

STORE PAINTS, CHEMICALS, SOLVENTS, AND OTHER HAZARDOUS MATERIALS INSIDE OR WITHIN A SHED WITH DOUBLE CONTAINMENT.

KEEP DUMPSTER LIDS CLOSED AND SECURED. FOR DUMPSTERS OR BINS THAT DON'T HAVE A LID, COVEP THEM WITH PLASTIC SHEETING OR A TARP DURING RAINY OR WINDY WEATHER.

WASTE MANAGEMENT: BUILDING MATERIALS, DEMOLITION WASTE, AND VEGETATION
10. ONSITE STORAGE OF CONSTRUCTION MATERIALS, STORE WASTES IN CONTAINERS OR
A DUMPSTER WHENEVER POSSIBLE COVER PLIES OF UNCONTAINED WASTES AND
WASTES STORED IN OPEN CONTAINERS DURING WINDY CONDITIONS AND PRIOR TO

SIGNIFICANT FORECASTED RAIN (0.25 INCHES IN A 24-HOUR PERIOD). DO NOT HOSE DUMPSTERS OUT ON THE CONSTRUCTION SITE. 11 USE CONSTRUCTION PRODUCTS MADE FROM OR PACKAGED IN POLYSTYRENE/PLASTIC FOAM IN A MANNER PREVENTING THE POLYSTYRENE/PLASTIC FOAM FROM BEING

FOAM IN A MANNER PREVENTING THE POLISTYRENE/PLASTIC FOAM FROM BEING RELEASED INTO THE ENVIRONMENT.

12 NEVER LEAVE OR ABANDON MATERIALS OR EXCAVATION SPOILS AT A PROJECT SITE. AT THE END OF A CONSTRUCTION PROJECT, COLLECT ALL UNUSED OR WASTE MATERIALS AND DISPOSE OF PROPERTY. DO NOT LEAVE DISCAPDED BUILDING MATERIALS, DEMOLITION WASTES, WASTE VEGETATION, SOIL, MULCH, VEGETATION, AND OTHER LANDSCAPE PRODUCTS IN A STREET, GULLY, OR WATERWAY.

PORTABLE TOILET FACILITIES ALL SANTARY WASTES SHALL BE COLLECTED AND MANAGED THROUGH THE USE OF PORTIBLE TOILET FACILITIES. ENSURE THAT THE LEASING COMPANY PROPERLY MAINTAINS THE TOILETS AND PROMPTLY MAKES REPAIRS AS NEEDED. CONDUCT

VISUAL INSPECTIONS FOR LEAKS. PLACE POPTABLE TOILETS ON A LEVEL SURFACE AND AT A SAFE DISTANCE AWAY FROM PAVED AREAS AND, TO THE EXTENT PRACTICAL, STORM DRAIN INLETS. SECURE THEM TO PREVENT BLOWING OVER.

15. PROVIDE SECONDARY CONTAINMENT FOR PORTABLE TOILETS LOCATED WITHIN 20 FEET OF A STREAM. STORM DRAIN, OR STREET.

16 DURING PUMP-OUT, TAKE APPROPRIATE MEASURES TO AVOID SPILLAGE. IF SPILLAGE OCCURS IT SHALL BE CLEANED UP IMMEDIATELY.

SITE CLEANUP SITE CLEANUP

17. WHEN CLEANING UP, SWEEP WHENEVER POSSIBLE. LITTER AND DEBRIS MUST BE PICKED UP AND DISPOSED OF PROPERLY.

18. IN THE ROADWAY AND 'OR ON THE SIDEWALK, MATERIAL STOCKPILES MUST BE REMOVED AND CLEANED UP BY THE END OF EACH DAY.

35. SWEEP AND REMOVE ANY SOLID WASTE THAT ACCUMULATES AT EROSION AND SEDIMENT CONTROL DEVICES AS SOON AS POSSIBLE.

36 DO NOT CLEAN THE STREET, SIDEWALK, OR OTHER PAVED AREAS BY WASHING OR BY DIPECTING SEDIMENT, CONCRETE, ASPHALT, OR OTHEP PARTICLES INTO THE STORM DRAIN SYSTEM IF USING WASTER, DIRECT IT TO A LANDSCAPED OR GRASSY AREA LARGE ENOUGH TO ABSORB ALL THE WATER.

MASONRY AND CONCRETE WORK

ISONRY AND CONCRETE WORK

C CONCRETE, CEMENT, AND MASONRY PRODUCTS MAY NEVER BE DISCHARGED INTO
THE STOPM DRAIN SYSTEM. CONCRETE, CEMENT, AND MASONRY MIXING CONTAINERS
MAY NOT BE WASHED OR RINSED INTO THE STREET OR STORM DRAIN SYSTEM. IF A
CONCRETE TRANSIT MIXER IS USED, A SUITABLE WASHOUT BOX, EXCAVATION OR
SELF-WASHING MIXER ABLE TO CONTAIN THE WASTE MATERIAL SHALL BE PROVIDED
DNL-SITE

UN-SIIE.

30 NOT MIX FRESH CONCPETE OR CEMENT MORTAR IN A GUTTER, OVER A STORM DRAIN INLET, OR IMMEDIATELY ADJACENT TO A WATER BODY.

39. STORE MATERIALS UNDER COVER AND PROTECTED FROM WIND, RAIN, AND RUNOFF.

40. SMALL AMOUNTS OF EXCESS CONCRETE, GROUT, AND MORTAR MAY BE DISPOSED OF IN THE TRASH.

WASH OUT FROM CONCRETE MIXERS MAY NEVER BE DISPOSED OF IN THE STREET OR STORM DRAIN SYSTEM. IF POSSIBLE, PUMP THE WASHOUT BACK INTO THE MIXER FOR REUSE.

SIDEWALK AND ROADWORK

IF IT PAINS UNEXPECTEDLY, TAKE APPROPRIATE ACTION TO PREVENT POLLUTION OF STORM WATER RUNOFF (E.G., DIVERT RUNOFF AROUND WORK AREAS, COVER MATERIALS).

43 THE DISCHARGE OF SLURRY TO THE STORM DRAIN SYSTEM IS PROHIBITED. TAKE MEASURES TO CONTAIN THE SLURRY AND, IF NECESSARY, PROTECT NEARBY CATC BASINS OR GUTTERS. IF SLURRY ENTERS THE STORM DRAIN SYSTEM, REMOVE MATERIAL IMMEDIATELY.

44. PARK PAVING MACHINES OVER DPIP PANS OR ABSORBENT MATERIALS IF THEY HAVE

45 NEVER WASH SWEPINGS FROM EXPOSED AGGREGATE CONCRETE INTO A STREET OR A STORM DRAIN INLET. COLLECT AND RETURN TO AGGREGATE BASE STOCKPILE OR DISPOSE OF IN THE TRASH.

46 REMOVE AND CLEAN UP MATERIAL STOCKPILES (E.G., STEEL I-BEAMS, LAGGING SAND) BY THE END OF EACH WEEK OR, IF DURING THE RAINY SEASON, THE END OF THE DAY, STOCKPILES MUST BE REMOVED BY THE END OF EACH DAY IF THE ARE LOCATED IN A PUBLIC RIGHT-OF-WAY

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	Æ	AJB	AJB	AJB		
	HEMBION		△ 9000 DRANAGE RWW	③ 9CC₀ DRANAGE RWW 92		
	DATE	7/28/20	11/20/20	4/19/21		

L ENGINEERS E, CALIFORNIA 9 722-3202 FAX

ASSOCIAT

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KASUNICH

HARO,

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70 GEOFFROY DRIVE,
APN 028-43-35
SANTA CRUZ, CA 95062 EROSION O

PROJECT: 9C5342.2 DATE 6/15/2020 DESIGN: JK+AJB DRAWN: AJB. SCALE: AS SHOWN

6

# CALIFORNIA COASTAL COMMISSION

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



# **COMMISSION NOTIFICATION OF APPEAL**

January 24, 2023

To: Carolyn Burke, Assistant Director

Santa Cruz County Community Development & Infrastructure

701 Ocean Street, 4<sup>th</sup> Floor Santa Cruz, CA 95060

From: Kevin Kahn, Central Coast District Manager

Nolan Clark, Coastal Planner

Re: Commission Appeal No. A-3-SCO-23-0003

Please be advised the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to the Public Resources Code Section 30623.

LOCAL PERMIT #: 201302

APPLICANT(S): Mark and Suzanne Cauwels

APPELLANT(S): Commissioners Linda Escalante and Dr. Caryl Hart; Thomas Mader

DESCRIPTION: Proposal to recognize a geogrid reinforced fill slope with a two-foot

keyway, drainage improvements, and an erosion control blanket/vegetation along the driveway and upper bluff at 70

Geoffroy Drive.

LOCATION: On the bluff at 70 Geoffroy Drive in the Live Oak neighborhood of

unincorporated Santa Cruz County (APN: 028-143-35)

APPEAL FILED: 1/19/2023

The Commission appeal number assigned to this appeal is A-3-SCO-23-0003. The Commission hearing date has not been scheduled at this time. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the Santa Cruz County's consideration of this

# A-3-SCO-23-0003 (Cauwels Slump Slide)

coastal development permit must be delivered to the Central Coast District Office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, the mailing list used to notice the project, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Nolan Clark at Nolan.Clark@coastal.ca.gov or by mail at the Central Coast District Office.

cc: Nathan MacBeth, Santa Cruz County Community Development & Infrastructure Deidre Hamilton, Applicant's Representative Ira Harris, Applicant's Attorney William Parkin, Appellant's Representative Michael Guth, Interested Person Doug Dority, Interested Person Elijah Mowbray, Interested Person Tisa Murdock, Interested Person Joani Mitchell, Interested Person Charles Paulden, Interested Person

# CALIFORNIA COASTAL COMMISSION

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



# COASTAL COMMISSIONER APPEAL FORM

Appeal of a Local Government Coastal Development Permit Action

# 1. Filing information

Appeal number:

A-3-SCO-23-0003

Date appeal filed:

January 19, 2023

District:

Central Coast District

Commissioner:

Linda Escalante

Commissioner:

Caryl Hart

# 2. Local CDP decision being appealed

Local government:

Santa Cruz County Planning Commission

CDP application number: 201302

CDP decision:

Approval with Conditions

Date of CDP decision:

December 14, 2023

Project location:

70 Geoffroy Dr.

Project description:

Proposal to recognize repair of a slump slide authorized under Emergency Coastal Development Permit 20227 by

constructing a reinforced fill slope.

RECEIVED

JAN 19 2023

CALIFOHNIA COASTAL COMMISSION CENTRAL COAST AREA

# 3. Applicant information

Applicant:

Mark and Suzanne Cauwels

Applicant address:

PO BOX 3705, Merced, CA 95344

Applicant phone number: (209) 233-1800

Applicant email address:

# 4. Grounds for this appeal

See attached statement.

### NECEIVED

JAN 19 2023

CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA

# Reasons for Appeal Santa Cruz County CDP Application 201302

On December 14, 2022, Santa Cruz County approved a coastal development permit (CDP) to recognize slope stabilization, drainage infrastructure, and related development previously authorized temporarily by a County Emergency CDP (i.e., installation of geogrid mats and a concrete foundation with a two-foot keyway into the lower bluff, drainage inlet structures and pipes, drainage discharge to the beach below, erosion control blankets/landscaping, etc.) along the blufftop and in the bluff face fronting 70 Geoffroy Drive at the Black Point portion of Twin Lakes State Beach in the unincorporated Live Oak area of Santa Cruz County. The County-approved project raises LCP and Coastal Act consistency questions in terms of shoreline armoring, public recreational access, landform alteration/public views, and coastal water quality, as well as the manner in which the LCP requires violations to be resolved as part of CDP actions.

In terms of shoreline armoring, the LCP only allows shoreline armoring to protect existing structures from a significant threat; when non-structural measures are infeasible and the armoring is required; and when such shoreline armoring projects commensurately address impacts to public beach access, shoreline processes, sand supply, and recreational and habitat resources. In this case, the infrastructure installed appears to qualify as shoreline armoring under the LCP, so it must be measured against the above criteria. However, it is not clear whether the County-approved project meets the thresholds necessary to approve shoreline armoring at this site, including whether such armoring is necessary/required, and if it is, whether potential coastal resource impacts have been adequately addressed/mitigated.

In terms of public recreational access, the Coastal Act and LCP together include a series of provisions requiring that public access and recreational opportunities be maximized; requiring that existing accessways be protected and, if feasible, enhanced; requiring that shoreline development facilitate public use and enjoyment of coastal recreational resources; requiring that shoreline and beach access to serve the public and coastal neighborhoods be provided; requiring that access and connections between parks be encouraged; and specifically calling out the site in question as a coastal accessway. There is evidence to suggest that the project site was historically used by the public for access to the beach from Geoffroy Drive, including providing a direct connection between the beach at Black Point and the beach just downcoast at Sunny Cove via Geoffroy. Some development at the site including a newly installed fence (a fence that was installed under a County-issued emergency CDP but ultimately not permitted under the County's approval), as well as past violations (see below), block public recreational access at this location, and the County-approved project does not appear to adequately evaluate these access issues, nor actually ensure access of any type.

In terms of landform alteration/public views, the LCP includes exacting criteria for development proposed in scenic and natural landform areas such as this, including requiring that landform alteration be avoided and minimized, and that all development be visually compatible and integrated with its surroundings. Even with the County-approved landscaping, the project introduces decidedly unnatural private armoring and drainage infrastructure (as well as the newly installed fence that was not permitted

# Reasons for Appeal Santa Cruz County CDP Application 201302

under the County's approval) into the bluff area above the public beach, including an industrial drainpipe outletting on the beach itself, and it is not clear that the County-approved project meets these landform alteration/public view requirements.

In terms of water quality, the LCP protects "receiving areas" from water quality degradation. Here, the project would capture drainage from a paved vehicular use area and direct it to the beach, where it would appear that it would then make its way not only to the backbeach Bonita Lagoon area but also the ocean, which at this location is part of the Monterey Bay National Marine Sanctuary. It is not clear that the County-approved project adequately protects coastal water quality, and by extension public recreational access associated with the significant recreational use at, and offshore from, Black Point/Twin Lakes State Beach.

Finally, in terms of violations, the LCP prohibits the approval of a CDP for proposed development on sites with existing violations unless the approval resolves the violations in such a manner that protects and enhances coastal resources to a pre-violation state or better. In this case, the Commission currently is tracking multiple alleged violations at the site that have served to block public access and otherwise adversely affect coastal resources (including but not necessarily limited to installing a fence/gate, private property/keep out signs, barbed wire, blackberry brambles, and even private security guards to block the public from using the accessway), and the Commission maintains open and active enforcement cases regarding these alleged violations of the County's LCP and the Coastal Act. In addition, the newly installed fence at the blufftop edge was not part of the County's approval and is also development that exists without benefit of a CDP. In any case, the County approved the CDP without resolution of the violations, which is not permissible under the LCP.

In short, the County-approved project raises questions regarding its consistency with the Coastal Act and the LCP as it relates to shoreline armoring, public recreational access, landform alteration/public views, and coastal water quality, as well as the manner in which the LCP requires violations to be resolved as part of CDP actions, and the County-approved project warrants further Commission review and deliberations regarding these issues.

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JAN 19 2023

CALIFORNIA COASTAL COMMISSION CENTRAL COAST ARE?

# 5. Commissioner appellant certification

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

DocuSigned by:

Commissioner name: Linda Escalante

Commissioner signature:

Date of signature: 01/18/2023

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JAN 18 2022

CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA

## 6. Commissioner appellant certification

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Commissioner name:

Caryl Hart

-DocuSigned by:

Commissioner signature:

Caryl Hart

Date of signature:

01/18/2023

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JAN 19 2022

CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

#### CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE 725 FRONT ST., SUITE 300 SANTA CRUZ, CA 95080-4508 (831) 427-4863 CENTRALCOAST@COASTAL.CA.GOV



#### APPEAL FORM

Appeal of Local Government Coastal Development Permit

## Filing Information (STAFF ONLY)

District Office: Central Coast

Appeal Number: <u>A-3-3CO-23-0003</u>

Date Filed: January 19, 2023

RECEIVED

JAN 19 2023

CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA

Appellant Name(s): Thomas W. Mader

#### **APPELLANTS**

**IMPORTANT.** Before you complete and submit this appeal form to appeal a coastal development permit (CDP) decision of a local government with a certified local coastal program (LCP) to the California Coastal Commission, please review the appeal information sheet. The appeal information sheet describes who is eligible to appeal what types of local government CDP decisions, the proper grounds for appeal, and the procedures for submitting such appeals to the Commission. Appellants are responsible for submitting appeals that conform to the Commission law, including regulations. Appeals that do not conform may not be accepted. If you have any questions about any aspect of the appeal process, please contact staff in the Commission district office with jurisdiction over the area in question (see the Commission's contact page at https://coastal.ca.gov/contact/#/).

Note regarding emailed appeals. Please note that emailed appeals are accepted ONLY at the general email address for the Coastal Commission district office with jurisdiction over the local government in question. For the Central Coast district office, the email address is <a href="maileocentral-coast@coastal.ca.gov">CentralCoast@coastal.ca.gov</a>. An appeal emailed to some other email address, including a different district's general email address or a staff email address, will be rejected. It is the appellant's responsibility to use the correct email address, and appellants are encouraged to contact Commission staff with any questions. For more information, see the Commission's <a href="maileocastal.ca.gov/contact/#/">coastal.ca.gov/contact/#/</a>).

# Appeal of local CDP decision Page 2

1. Appell	ant info	rmation1	
Name:		Thomas W. Mader	
Mailing ad	dress:	101 Saxon Avenue, Capitola, CA 95010	
Phone number: Email address:		(831) 479-4759	
		twiggins1939@gmail.com	
Linaii addi	000.		
How did yo	ou particip	pate in the local CDP application and decision-making process?	
Did not p	•		
Describe:	_	nsel, William Parkin of Wittwer Parkin, submitted written comments	
	and ap	peared on my behalf at the Planning Commission hearing	
	on Dec	cember 14, 2022.	
	*		
please idei	ntify why	pate in the local CDP application and decision-making process, you should be allowed to appeal anyway (e.g., if you did not you were not properly noticed).	
Describe:			
why you sh	nould be a e and hea	you exhausted all LCP CDP appeal processes or otherwise identify allowed to appeal (e.g., if the local government did not follow proper tring procedures, or it charges a fee for local appellate CDP	
Describe:	Santa Cruz County charges a fee for appeals of CDPs. Therefore,		
	I am appealing directly to the Commission.		
		2.512.15.11	

<sup>&</sup>lt;sup>1</sup> If there are multiple appellants, each appellant must provide their own contact and participation information. Please attach additional sheets as necessary.

# Appeal of local CDP decision Page 3

2. Local (	CDP decision being appealed	2			
Local government name:		County of Santa Cruz			
Local gove	rnment approval body:	Planning Commission 201302			
Local gove	rnment CDP application number:				
Local gove	rnment CDP decision:	CDP approval CDP denials			
Date of local government CDP decision:		December 14, 2022			
	he local government.	of the development that was approved or nwest end of Geoffroy Drive			
Describe:	approximately 350 feet southwest of the intersection				
	with 16th Ave (70 Geoffroy Drive). The project was a proposal				
	to recognize repair or slump slide authorized under Emergency Coastal				
	Development Permit 20227 by constructing a reinforced fill slope.				
	-	- ANNO TOTAL			
	· · · · · · · · · · · · · · · · · · ·				

<sup>&</sup>lt;sup>2</sup> Attach additional sheets as necessary to fully describe the local government CDP decision, including a description of the development that was the subject of the CDP application and decision.

<sup>3</sup> Very few local CDP denials are appealable, and those that are also require submittal of an appeal fee. Please see the appeal information sheet for more information.

3. Applicant information

# Appeal of local CDP decision Page 4

or Application		
Applicant name(s):	Mark & Suzanne Cauwels	
(7	P.O. Box 3705	
Applicant Address:	Merced, CA 95344	

#### 4. Grounds for this appeal

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP or to Coastal Act public access provisions. For appeals of a CDP denial, grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions. Please clearly identify the ways in which the development meets or doesn't meet, as applicable, the LCP and Coastal Act provisions, with citations to specific provisions as much as possible. Appellants are encouraged to be concise, and to arrange their appeals by topic area and by individual policies.

Describe:	Please see attachment.

4 Attach additional sheets as necessary to fully describe the grounds for appeal.

# Appeal of local CDP decision Page 5

## 5. Identification of interested persons

On a separate page, please provide the names and contact information (i.e., mailing and email addresses) of all persons whom you know to be interested in the local CDP decision and/or the approved or denied development (e.g., other persons who participated in the local CDP application and decision making process, etc.), and check this box to acknowledge that you have done so.

Interested persons identified and provided on a separate attached sheet

## 6. Appellant certifications

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Print name Thor	homas W. Mader		
Thomas W. Mader			
Signature			
Date of Signature	1/19/2023		

# 7. Representative authorizations

While not required, you may identify others to represent you in the appeal process. If you do, they must have the power to bind you in all matters concerning the appeal. To do so, please complete the representative authorization form below and check this box to acknowledge that you have done so.

I have authorized a representative, and I have provided authorization for them on the representative authorization form attached.

<sup>&</sup>lt;sup>5</sup> If there are multiple appellants, each appellant must provide their own certification. Please attach additional sheets as necessary.

<sup>6</sup> If there are multiple appellants, each appellant must provide their own representative authorization form to identify others who represent them. Please attach additional sheets as necessary.

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

Your Name Thomas W. Mader

## CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300 SAN FRANCISCO, CA 94105-2219 VOICE (415) 904-5200 FAX (415) 904-5400



## **DISCLOSURE OF REPRESENTATIVES**

If you intend to have anyone communicate on your behalf to the California Coastal Commission, individual Commissioners, and/or Commission staff regarding your coastal development permit (CDP) application (including if your project has been appealed to the Commission from a local government decision) or your appeal, then you are required to identify the name and contact information for all such persons prior to any such communication occurring (see Public Resources Code, Section 30319). The law provides that failure to comply with this disclosure requirement prior to the time that a communication occurs is a misdemeanor that is punishable by a fine or imprisonment and may lead to denial of an application or rejection of an appeal.

To meet this important disclosure requirement, please list below all representatives who will communicate on your behalf or on the behalf of your business and submit the list to the appropriate Commission office. This list could include a wide variety of people such as attorneys, architects, biologists, engineers, etc. If you identify more than one such representative, please identify a lead representative for ease of coordination and communication. You must submit an updated list anytime your list of representatives changes. You must submit the disclosure list before any communication by your representative to the Commission or staff occurs.

CDP Application or Ap	peal Number 201302	
Lead Represent	ative	
Name William P. F	Parkin	
Title Attorney		
Street Address.	Wittwer Parkin, 335 Spreckels Drive, Suite H	
City Aptos		
State, Zip CA, 95	5003	
<b>Email Address</b>	wparkin@wittwerparkin.com	
Daytime Phone	(831) 429-4055	
Your Signature Tho	Mas W. Mader 38905F09424 19/2023	

# Additional Representatives (as necessary)

	Name	
	Title	
	City	
	State, Zip	
	Email Address	
	Daytime Phone	
	Name	
	Title	
	Street Address.	
	City	
	State, Zip	
	Email Address	
à)	Daytime Phone	
	Name	
	Title	
	Street Address.	
	City	
	State, Zip	
	Email Address _	
	Daytime Phone	
	Name	
	Title	
	Street Address.	
	City	
	State, Zip	
	Email Address	
	Daytime Phone	
Vous 9	Pianatura	
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Date o	of Signature	

#### 4. GROUNDS FOR THIS APPEAL

# 1. A Coastal Development Permit May Be Granted Only When Outstanding Violations Have Been Resolved

As detailed in letters from Coastal Commission Staff to the County of Santa Cruz, the applicant has unresolved code violations on the property dating back to the 1990s, including Violation File Numbers V-3-01-055 and V-3-18-0018. These violations include, but are not limited to, the erection of a fence at the blufftop edge, a locked blufftop edge gate, barbed wire and restrictive signage, and the planting of bluff-area vegetation and the use of security guards to block and deter public access. County Code section 13.20.170, subsection (C), which is part of the County's LCP, states as follows:

Development that is proposed for property on which there are existing unresolved coastal development permit violations shall only be approved and allowed if: (1) the approval resolves all such violations through its terms and conditions and (2) such resolution protects and enhances coastal resources, including that it results in a coastal resource condition that is as good or better than existed prior to the violations; or (3) the proposed development is necessary to ensure health and safety, in which case the approval for the development shall specify that an application to resolve the unresolved coastal development permit violation(s) shall be made within 90 days of the approval.

Therefore, the CDP should have been denied until the violations were resolved. Indeed, the applicant has been intransigent in resolving the violations. The County erroneously took the position that since the violations were not issued by the County, that section 13.20.170(C) does not apply. However, section 13.20.170 does not distinguish between violations based on which agency has taken enforcement action. The County Code merely states refers to "unresolved coastal development permit violations" regardless of the enforcing authority.

The temporary bluff retention measures that were authorized permanently by the approved CDP are in the same bluff area where pedestrians historically accessed the beach and the project is actually a cynical way for the applicant to further limit public access.

Moreover, the analytic baseline for "existing" conditions is a gentle bluff slope from Geoffroy Drive to the beach with a beach accessway. The County failed to apply the correct baseline which is the condition of the project site before the temporary emergency work was authorized and without the illegal structures and development on the site (i.e., the condition as it existed prior to the pre-1990s era violations). In point of fact, not all County Planning Commissioners understood that the CDP could be disapproved. Commissioners believed that they were simply making a pro forma approval of improvements that were already approved via the emergency CDP. The Commissioners failed to understand the process for approval of a CDP after emergency authorization, and County Staff failed to explain the process and purpose of approval of CDP subsequent to the issuance of an emergency CDP.

# 2. The Project Does Not Comply With the LCP Because the Fence and Work Causes Significant Visual Impacts

The Project is inconsistent with the LCP's visual resource protections. The proposed project would be substantially visible from the beach, which raises LCP consistency issues including with respect to LUP Policies 5.10.2 "Development within Visual Resource Areas", and 5.10.7 "Open Beaches and Blufftops." LUP Policy 5.10.2 acknowledges the importance of visual resources and requires that projects be evaluated against their unique environment (i.e., the surrounding projects and natural context), and LUP Policy 5.10.7 prohibits the placement of new permanent structures that would be visible from the public beach except where allowed on existing parcels of record and "where compatible with the pattern of existing development," and "Require shoreline protection and access structures to use natural materials and finishes to blend with the character of the area and integrate with the landform." The LCP also has design criteria for development proposed in scenic areas, where the project is located. See County Code section 13.20.130.

The development proposed to be sanctioned by the CDP adds to the existing unnatural condition that has been caused by retention and other structures at 60 and 70 Geoffroy Drive and should not be permitted here.

#### 3. Public Recreational Access Has Been Blocked in Violation of the LCP

The CDP legitimizes modifications to the upper slope of the bluff in a manner that prevents use of the historical accessway to the beach used by the public. Therefore, the CDP is inconsistent with the Coastal Act and Local Coastal Program related to public recreational access. The CDP violates Coastal Act section 30210, 30211, 30212, 30213, and 30220 through 30223. Moreover, the County LCP protects public recreational access (see for example, LUP Objections 7.7 a, b, and c, and LUP Policies 7.7.1, 7.7.6, 7.7.9, 7.7.10, and 7.7.11, Chapter 7 Land Use Programs a and b, and LUP Policies 7.7.18 and 7.7.19.)

#### 4. Shoreline Armoring is Unnecessary and Violates the LCP

Pursuant to the LCP, shoreline protection measures are only allowed "Where necessary to protect existing structures from a significant threat." LUP Policy 6.2.16, and County Code section 16.10.070(h)(3). The driveway that is ostensibly being protected here was replaced since 1977 and is not an "existing structure," and the County did not show that the slope failure constituted a significant threat to the driveway. Moreover, these slope alterations, and change in drainage, will lead to further impacts to the slope and the beach below. Finally, there were alternatives available, such as realigning the driveway, that did not require a shoreline protection measure. The shoreline protection measure was simply a means to further exclude public access, rather than necessary to protect existing structures.

#### 5. IDENTIFICATION OF INTERESTED PERSONS

Michael Guth 2-2905 East Cliff Drive Santa Cruz, CA 95062 (831) 462-8270 mguth@guthpatents,com

Doug Dority 205 16<sup>th</sup> Avenue Santa Cruz, CA 95062 (415) 246-2887 doug.dority@cepheid.com

Elijah Mowbray 591 Laurel Glen Road Soquel, CA 95073 (831) 419-9399 elijahmowbray@gmail.com

Ira James Harris P.O. Box 1478 Orinda, CA 94563 (925) 258-5100 irajamesharris@gmail.com

Tisa Murdock (831) 818-6095 tisa.murdock@gmail.com

Joani Mitchell joani.mitchell@gmail.com

#### APPLICABLE LOCAL COASTAL PROGRAM PROVISIONS AND COASTAL ACT SECTIONS

#### **Land Use Plan (LUP) Objectives and Policies:**

#### **Shoreline Armoring**

#### **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.

#### **Public Access and Recreation**

#### **Objective 7.1a Parks and Recreation Opportunities**

To provide a full range of public and private opportunities for the access to, and enjoyment of, park, recreation, and scenic areas, including the use of active recreation areas and passive natural open spaces by all ages, income groups and people with disabilities with the primary emphasis on needed recreation facilities and programs for the citizens of Santa Cruz County.

#### **Objective 7.7a Coastal Recreation**

To maximize public use and enjoyment of coastal recreation resources for all people, including those with disabilities, while protecting those resources from the adverse impacts of overuse.

#### **Objective 7.7b Shoreline Access**

To provide a system of shoreline access to the coast with adequate improvements to serve the general public and the coastal neighborhoods which is consistent with the California Coastal Act, meets public safety needs, protects natural resource areas from overuse, protects public rights and the rights of private property owners, minimizes conflicts with adjacent land uses, and does not adversely affect agriculture, subject to policy 7.6.2.

### **Objective 7.7c Beach Access**

To maintain or provide access, including visual access, to every beach to which a granted access exists or to which the public has acquired a right of access through use, as established through judicial determination of prescriptive rights, and acquisition through appropriate legal proceedings, in order to ensure one access to every pocket beach and convenient, well distributed access to long sandy beaches, subject to policy 7.6.2.

#### Policy 7.7.1 Coastal Vistas

Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches, subject to policy 7.6.2.

#### Policy 7.7.6 Hiking and Biking Trail Network

Subject to policy 7.6.2, establish a system of hiking and bicycle trails and bridges which provides access to and connects the various parks, recreation areas, beaches, and urban areas. For example, develop trails to link Nisene Marks State Park with Seacliff State Beach. Link the County trail system between the state parks and provide a lateral trail route along the coast. Design trails to be accessible to persons with disabilities where resources can be protected.

#### 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.

#### Policy 7.7.11(b) Vertical Access Within the Urban Services Line

Determine whether new development may decrease or otherwise adversely affect the availability of public access, if any, to beaches and/or increases the recreational demand. If such impact will occur, the County will obtain, as a condition of new development approval, dedication of vertical access easements adequate to accommodate the intended use, as well as existing access patterns, if adverse environmental impacts and use conflicts can be mitigated, under the following conditions:

- (b) Within the Urban Services Line:
  - from the first public roadway to the shoreline if there is not dedicated access within 650 feet;
  - through properties inland of the first public roadway if there is evidence that residents have been using the property to gain access to the shoreline, and if closure of the pathway would require residents to detour more than one-eighth mile.

## Policy 7.7.18 Areas Designated for Neighborhood Public Access

Maintain a system of neighborhood access points appropriate for access by local residents at the following locations and other accesses as determined by the Board of Supervisors, subject to policy 7.6.2:

#### Live Oak

at the end of the following streets:

7<sup>th</sup> Avenue

12<sup>th</sup> Avenue

13<sup>th</sup> Avenue

Geoffroy Drive

Sunny Cove Avenue

18<sup>th</sup> Avenue

19<sup>th</sup> Avenue

20th Avenue

21<sup>st</sup> Avenue

Corcoran Beach

23<sup>rd</sup> Avenue

26th Avenue

Rockview Drive

the walkway from the end of 30<sup>th</sup> Avenue

between East Cliff and Pleasure Point and

Pleasure Point and the shoreline

the stairway between 35<sup>th</sup> Ave. and 36<sup>th</sup> Ave.

38<sup>th</sup> Avenue

41st Avenue

Mid County

end of Oakdale Drive

end of Beachgate Way

Cliff Drive between Lamanda Drive and

**Bayview Drive** 

Shore Trail at Seaview Drive

Sumner Avenue

Hidden Beach

Via Concha

Via Gaviota

Via Palo Alto

0 0 1

Seascape Park

Seascape arroyos

Trestle Beach

#### **South County**

Place de Mer

Sand Dollar Beach

Zils Road

#### 7.10.1 Designation of Existing Parks, Recreation and Open Space Sites (O-R)

Utilize a Parks, Recreation and Open Space designation to recognize existing public and private recreational uses, including state, regional, and County parks, recreational vehicle parks, campgrounds, ecological preserves, golf courses, and other commercial recreational uses.

#### 7.10.5 Intensity of Use

Recognize an intensity of use for existing public and private parks and recreational uses at the existing level of development, including development(s) approved by the California Coastal Commission but not yet constructed. Permit new development or increases in intensity of uses where consistent with infrastructure constraints, scenic, natural and agricultural resource protection.

#### Objective 7.8 State Parks, Open Space and Facilities

To protect through state ownership those areas that are of statewide interest or concern, and that service a regional or statewide need for recreational opportunities. The mission of the California Department of Parks and Recreation is to provide for the health, inspiration, and education of the people of California by helping to preserve the state's extraordinary biological diversity, protecting its most valued natural and cultural resources, and creating opportunities for high-quality outdoor recreation. Figure 7-4 shows existing state park acreage, miles of beach, and annual attendance.

#### Public Views and Character

### **Objective 5.10a Protection of Visual Resources**

To identify, protect and restore the aesthetic values of visual resources.

#### **Objective 5.10b New Development in Visual Resource Areas**

To ensure that new development is appropriately designed and constructed to have minimal to no adverse impact upon identified visual resources.

#### **Policy 5.10.2 Development Within Visual Resource Areas**

Recognize that visual resources of Santa Cruz County possess diverse characteristics and that the resources worthy of protection may include, but are not limited to, ocean views, agricultural fields, wooded forests, open meadows, and mountain hillside views. Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section.

#### Policy 5.10.7 Open Beaches and Blufftops

Prohibit the placement of new permanent structures which would be visible from a public beach, except where allowed on existing parcels of record, or for shoreline protection and for public beach access. Use the following criteria for allowed structures:

(a) Allow infill structures (typically residences on existing lots of record) where compatible with the pattern of existing development.

(b) Require shoreline protection and access structures to use natural materials and finishes to blend with the character of the area and integrate with the landform.

#### Water Quality and ESHA

# Policy 5.4.1 Protecting the Monterey Bay National Marine Sanctuary from Adverse Impacts

Prohibit activities which could adversely impact sensitive habitats of the Monterey Bay National Marine Sanctuary, including the discharge of wastes and hazardous materials. The main sources of concern are wastewater discharge, urban runoff, toxic agricultural drainage water, including that originating outside of Santa Cruz County, and the accidental release of oil or other hazardous material from coastal tanker traffic.

#### Policy 5.4.14 Water Pollution from Urban Runoff

Review proposed development projects for their potential to contribute to water pollution via increased storm water runoff. Utilize erosion control measures, on-site detention and other appropriate storm water best management practices to reduce pollution from urban runoff.

#### Policy 5.7.1 Impacts From New Development On Water Quality

Prohibit new development adjacent to marshes, streams and bodies of water if such development would cause adverse impacts on water quality which cannot be fully mitigated.

## Policy 5.7.5 Protecting Riparian Corridors and Coastal Lagoons

Require drainage facilities, including curbs and gutters in urban areas, as needed to protect water quality for all new development within 1000 feet of riparian corridors or coastal lagoons.

#### **Implementation Plan (IP) Sections:**

## **Shoreline Armoring**

#### 16.10.070(H)(3)(c) Permit conditions.

The recommendations of the geologic hazards assessment, full geologic report, and/or the recommendations of other technical reports (if evaluated and authorized by the Planning Director), shall be included as permit conditions of any permit or approvals subsequently issued for the development. In addition, the requirements described below for specific geologic hazards shall become standard conditions for development, building and land division permits and approvals. No development, building and land division permits or approvals shall be issued, and no final maps or parcel maps shall be recorded, unless such activity is in compliance with the requirements of this section.

- (H) Coastal Bluffs and Beaches.
  - (3) Shoreline protection structures shall be governed by the following:

(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.

#### **Public Access**

#### 13.10.351 Purposes of the Parks, Recreation and Open Space PR District.

In addition to the general objectives of this chapter, the PR District is included in the zoning ordinance to achieve the following purposes:

- (A) General. To preserve the County's undevelopable lands and public park lands as open space; and to protect open space in the County by allowing commercial recreational uses which preserve open space by means of large acreage sites with low intensity uses which are compatible with the scenic values and natural setting of the County; and to preserve agriculture as an open space use.
- (B) Commercial Recreation. To provide for commercial recreation facilities and uses which aid in the conservation of open space in the County; to recognize and encourage these uses as a major component in the County's economy; to provide standards for their development and operation so as to ensure the preservation of open space, an appropriate intensity of uses, adequate public access and services, and proper management and protection of the environment and the natural resources of the County.
- (C) State and Federal Parks, Preserves, and Biotic Research Stations. To provide for the State and Federal park lands, preserves and biotic research facilities in the County; to provide density and development standards for such uses consistent with the availability of adequate access and services, land development capacities, agricultural protection, and the preservation of open space.
- (D) Local Parks. To recognize existing park sites and to designate and protect those locations designated by the adopted County General Plan for local park use, and to provide development and operation standards for such uses.
- (E) Open Space. To designate and to preserve, through careful and limited development and use, those lands designated on the General Plan which are not appropriate for development due to the presence of one or more of the following resources or constraints:
  - (1) Coastal bluffs and beaches;
  - (2) Coastal lagoons, wetlands and marshes;
  - (3) Riparian corridors and buffer areas;
  - (4) Flood ways and floodplains;
  - (5) Wooded ravines and gulches which separate and buffer areas of development;

- (6) Slopes over 30 percent inside the urban services line; over 50 percent outside the urban services line;
- (7) Sensitive wildlife habitat areas and biotic resource areas.

# 13.10.352 Uses in the Parks, Recreation and Open Space (PR) District. Parks, recreation and open space uses.

- (A) Principal Permitted Uses.
  - (1) In the Coastal Zone, the principal permitted uses in the Parks, Recreation and Open Space District shall be as follows: open-space uses not involving permanent structures and public and private open-space recreational uses, including appurtenant uses and structures, on developable lands.

## 16.10.070(H)(3)(e) Permit conditions.

The recommendations of the geologic hazards assessment, full geologic report, and/or the recommendations of other technical reports (if evaluated and authorized by the Planning Director), shall be included as permit conditions of any permit or approvals subsequently issued for the development. In addition, the requirements described below for specific geologic hazards shall become standard conditions for development, building and land division permits and approvals. No development, building and land division permits or approvals shall be issued, and no final maps or parcel maps shall be recorded, unless such activity is in compliance with the requirements of this section.

- (H) Coastal Bluffs and Beaches.
  - (3) Shoreline protection structures shall be governed by the following:
    - (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, archaeologic or paleontologic resources. Shoreline protection structures shall minimize visual impact by employing materials that blend with the color of natural materials in the area.

#### **Public Views and Character**

# 13.20.130 Design criteria for Coastal Zone developments.

- (A) General.
  - (1) Applicability. The design criteria for Coastal Zone developments are applicable to any development requiring a coastal development permit.
  - (2) Conformance with Development Standards and Design Criteria of Chapters 13.10 and 13.11 SCCC. All applicable and/or required development standards and design criteria of Chapters 13.10 and 13.11 SCCC shall be met in addition to the criteria of this section. For projects that are listed in SCCC 13.11.040 as requiring Chapter 13.11 SCCC design review, and for those located in scenic areas mapped on the LCP maps or as determined during project review, all applicable standards and conditions of that chapter shall be

- met. For projects that are not listed in SCCC 13.11.040 as requiring Chapter 13.11 SCCC design review, the standards and conditions of SCCC 13.11.072(A)(1) and 13.11.073(B)(1) only shall be met.
- (B) Entire Coastal Zone. The following design criteria shall apply to projects located in the Coastal Zone:
  - (1) Visual Compatibility. All development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas. Structure design should emphasize a compatible community aesthetic as opposed to maximum-sized and bulkier/boxy designs, and should apply tools to help provide an interesting and attractive built environment (including building facade articulation through measures such as breaking up the design with some areas of indent, varied rooflines, offsets, and projections that provide shadow patterns, smaller second story elements set back from the first, and appropriate surface treatments such as wood/wood-like siding or shingles, etc.).
  - (7) Development shall be sited and designed so that it does not block or significantly adversely impact significant public views and scenic character, including by situating lots, access roads, driveways, buildings, and other development (including fences, walls, hedges and other landscaping) to avoid view degradation and to maximize the effectiveness of topography and landscaping as a means to eliminate, if possible, and/or soften, if not possible, public view impacts.
- (C) Rural Scenic Resources. In addition to the criteria above that applies throughout the Coastal Zone, the following design criteria shall also apply to all development proposed outside of the Urban Services Line and the Rural Services Line located in mapped scenic resource areas or determined to be in a scenic resource area during project review:
  - (2) Site Planning. Development shall be sited and designed to fit the physical setting carefully so that its presence is subordinate to the natural character of the site, including through appropriately maintaining natural features (e.g., streams, riparian corridors, major drainages, mature trees, dominant vegetative communities, rock outcroppings, prominent natural landforms, tree groupings, etc.) and requiring appropriate setbacks therefrom. Screening and landscaping suitable to the site shall be used to soften the visual impact of development unavoidably sited in the public viewshed.
- (D) Beach Viewsheds. In addition to the criteria above that applies throughout the Coastal Zone, and the criteria above that also applies within rural areas (as applicable), the following design criteria shall also apply to all projects located on blufftops and/or visible from beaches:
  - (1) Blufftop Development.
    - (b) Within the Rural Services Line and the Urban Services Line, new blufftop development shall conform to the rural scenic resources criteria in subsection (C)(2) of this section.

#### Water Quality and ESHA

#### 16.32.040 Definitions.

Sensitive Habitat. An area is defined as a "sensitive habitat" if it meets one or more of the following criteria:

- (7) Nearshore reefs, rocky intertidal areas, seacaves, islets, offshore rocks, kelp beds, marine mammal hauling grounds, sandy beaches, shorebird roosting, resting and nesting areas, cliff nesting areas and marine, wildlife or educational/research reserves.
- (9) All lakes, wetlands, estuaries, lagoons, streams and rivers.

## 16.32.090 Approval conditions.

- (B) The following conditions shall be applied to all development within any sensitive habitat area:
  - (1) All development shall mitigate significant environmental impacts, as determined by the Environmental Coordinator.

#### Sensitive Habitats Standards

No new development shall be allowed adjacent to marshes, streams, and bodies of water if such development would cause adverse impacts on water quality which cannot be mitigated or will not be fully mitigated by the project proponent.

#### 16.10.040 Definitions.

For the purposes of this chapter, the following definitions apply:

(59) "Shoreline protection structure" means any structure or material, including but not limited to riprap or a seawall, placed in an area where coastal processes operate.

#### **Violations**

#### 13.20.170 Violations of Coastal Zone regulations.

(C) Development that is proposed for property on which there are existing unresolved coastal development permit violations shall only be approved and allowed if: (1) the approval resolves all such violations through its terms and conditions and (2) such resolution protects and enhances coastal resources, including that it results in a coastal resource condition that is as good or better than existed prior to the violations; or (3) the proposed development is necessary to ensure health and safety, in which case the approval for the development shall specify that an application to resolve the unresolved coastal development permit violation(s) shall be made within 90 days of the approval.

#### **Coastal Act Public Access Sections:**

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

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

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

**ELECTRONICALLY FILED** Superior Court of California County of Santa Cruz 8/7/2020 3:09 PM Alex Calvo, Clerk IRA JAMES HARRIS, SB #99760 1 By: Sandra Gonzalez, Deputy LAW OFFICES OF IRA JAMES HARRIS One Camino Sobrante, Suite 208 P.O. Box 1478 3 Orinda, CA 94563 Telephone: (925) 258-5100 Facsimile: (925) 281-4977 5 Attorney for Plaintiffs 6 7 SUPERIOR COURT OF CALIFORNIA 8 **COUNTY OF SANTA CRUZ** 9 10 No.: 19CV00673 FOWLER PACKING COMPANY, a California 11 Corporation, WILLIAM P. AND LINDA L. SULLIVAN, TRUSTEES OF THE SULLIVAN DECLARATION OF EUGENE SHKLAR IN 12 SUPPORT OF PLAINTIFFS' FAMILY REVOCABLE LIVING TRUST DATED ) APPLICATION FOR A DEFAULT MAY 2, 1996; MARK A. AND SUZANNE J. 13 JUDGMENT AGAINST THE MEMBERS CAUWELS, TRUSTEES OF THE MARK AND OF THE PUBLIC ON THE FIRST AND 14 SUZANNE CAUWELS FAMILY TRUST SECOND CAUSES OF ACTION FOR INITIALLY CREATED ON JULY 30, 1992; **OUIET TITLE** NORMAN L. CHAPMAN AND CAROL S. 15 CHAPMAN, TRUSTEES OF THE 2000 NORMAN L. CHAPMAN & CAROL S. CHAPMAN REVOCABLE TRUST UNDER Date: 16 Time: Dept.: INSTRUMENT DATED JUNE 6, 2000; DAWNA 17 SUTTON, TRUSTEE OF THE SUTTON FAMILY Judge: REVOCABLE TRUST DATED OCTOBER 6, Trial Date: None 18 1997 19 February 27, 2019 Complaint Filed: Plaintiffs, 20 21 VS. COUNTY OF SANTA CRUZ, a Public Entity: 22 CALIFORNIA COASTAL COMMISSION, a Public Agency; ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE 23 RIGHT, TITLE, ESTATE, LIEN ÖR INTEREST 24 IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS 25 TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO; and DOES 1 to 100, inclusive, 26 Defendants. 27 28 DECLARATION OF EUGENE SHKLAR ISO PLAINTIFFS' APPLICATION FOR DEFAULT JUDGMENT

Exhibit 6 A-3-SCO-23-0003 Page 1 of 3 

## I, Eugene Shklar, hereby declare:

- 1 am over 18 years of age and am now a resident of the State of Florida. As a Trustee of
  the 1993 Shklar Revocable Trust dated June 1, 1993, I previously owned the property located at 70
  Geoffroy Drive, Santa Cruz, California otherwise known as APN 028-143-35. I am competent to testify
  to the following facts, which are true of my own personal knowledge.
- 2. I purchased 70 Geoffroy Drive, Santa Cruz, California in April 2001. My wife and I lived there as our primary residence from May 2001 until we sold the property in June 2009. At that time of my purchase, an old earthen pathway extended down the steep slope from 70 Geoffroy Drive to a sandy area but was blocked by a 5-6 foot high, chain link fence with a locked gate at the top of the northeastern bluff off the private drive. There was also attached to the wooden utility pole in front of the locked gate in the fence a hardware-store plastic "no trespassing" sign that because of its weathered condition appeared to have been there for quite some time. I purchased from Richard and Wendy Lewis Family Trust. Mrs. Lewis, through her real estate agent, had disclosed that the pathway, fence and gate were present when they purchased in 1993 and reported that these improvements appeared to be decades old at that time. The Lewises and their toddler child had not used the pathway given its dangerous condition and rocks near its bottom and reported that Mr. Dilworth at 63 Geoffroy Drive would allow any neighbor access through the locked gate on his property.
- 3. During my ownership of the 70 Geoffroy Drive property I verified the history of the fence and eastern slope by researching the area by obtaining archival aerial photographs. Attached hereto as **Exhibit G** is a true and correct copy of an August 27, 1963 aerial photograph I obtained during my ownership as well as a close-up view of the private driveway at the end of Geoffroy Drive.
- 4. While the pathway to the beach was dilapidated and very difficult to traverse, we would occasionally encounter a person trespassing across our driveway, who would attempt to climb over the fence. I had a number of confrontations with such trespassers, who damaged the fence and gate, and littered our private drive with eigarette butts and other debris.
- 4. As a result, I chose to permanently close off the access. I added some barbed wire to the chain link fence; I installed a wooden fence at the base of the bluff (also with barbed wire); In May and

DECLARATION OF EUGENE SHKLAR ISO PLAINTIFFS' APPLICATION FOR DEFAULT JUDGMENT

June 2001 I purchased and posted three (3) professionally made metal "No Trespassing" "Private Property" signs (which were 12 by 18 inches in size): two on the chain link fence facing the driveway and the third facing the beach area on the constructed fence at the bottom of the bluff. I also posted two (2) professionally made metal signs (each 18 by 24 inches in size): one -on its own metal pole at street level entering the private driveway and the other on its own metal pole next to the aforementioned wooden utility pole. These two signs stated that the driveway was a "Private Road" and stated "Do Not Enter" as there was "No Beach Access" and that "Right to Pass By Permission and Subject to Control of Owners CC 1008". I then allowed the thorny blackberries and other vegetation between the top fence and the bottom fence to overgrow. I also hired a uniformed security guard to sit in the driveway near the gate and fence for two days on June 9 and 10 of 2001. In a few months the vegetation completely covered the fence, gate and pathway, and the trespassers were trained to avoid our area entirely. These efforts, along with our own use of 63 Geoffroy to access the beach, served to discourage further trespassers. Attached as Exhibit H is a true and correct copy of the May 24, 2001 approved order for the signs I had installed and a copy of my credit-card statements from that time showing I paid the sign vendor in two installments. Attached as Exhibits 1, J and K are aerial photographs from californiacoastline.org dated September 30, 2002. October 3, 2009 and October 4, 2013 of the private drive wherein the 18 x 24 CC 1008 sign at the driveway entrance is visible.

5. I understand that each of the homeowners who comprise Geoffroy Homeowners Association (60, 63, 70, 80 and 90 Geoffroy Drive) has taken their own action to prevent trespassers from crossing their property or parking in the private driveway to access Twin Lakes/Black Beach. All these efforts were very successful these trespass activities effectively ceased in June 2001.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 6. 2020 at

ACKSONVILLE, Florida.

Eugen Shhlan

Eugene Shklar

DECLARATION OF EUGENE SHKLAR ISO PLAINTIFFS' APPLICATION FOR DEFAULT JUDGMENT

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