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Appeal Filed:	8/28/2026
Action Deadline:	11/6/2026
Staff:	Nolan Clark - SC
Staff Report:	10/23/2026
Hearing Date:	11/4/2026

STAFF REPORT
SUBSTANTIAL ISSUE DETERMINATION

Appeal Number:	**A-3-SCO-26-0022**
Applicant:	Kevin and Sandy Huber
Appellants:	Commissioners Escalante and Hart; Genefa Feloney
Local Government:	Santa Cruz County
Local Decision:	Santa Cruz County coastal development permit number 251501, approved by the Santa Cruz County Zoning Administrator on August 7, 2026
Project Location:	625 Beach Drive within the unincorporated Aptos/Rio del Mar area of Santa Cruz County (APN 043-152-54)
Project Description:	Convert an existing two-story, 2,568 square-foot single-family dwelling into a fully detached accessory dwelling unit and construct a new two-story, 2,909 square-foot single-family dwelling with an attached garage and a carport, all of which would be constructed on structural piers, on the same property
Staff Recommendation:	Substantial Issue Exists

IMPORTANT HEARING PROCEDURE NOTE

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

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

SUMMARY OF STAFF RECOMMENDATION

Santa Cruz County approved a coastal development permit (CDP) for the conversion of an existing two-story, 2,568 square-foot single-family dwelling into a fully detached accessory dwelling unit (ADU) located on the landward portion of the property, and the construction of a new two-story, 2,909 square-foot single-family dwelling with over 2,130 square feet of non-habitable understory surrounded by break-away walls, and including an attached 271 square-foot garage and 294 square foot-storage area (thus appearing as over 5,600 square feet of home on the seaward side of the road), where the habitable portion of the project would be elevated above beach level and the Federal Emergency Management Agency (FEMA) VE flood elevation on 24 2.5-foot in diameter structural concrete piers drilled at least 17 feet into bedrock (for a total vertical pier height of at least 43 feet), all located on the seaward portion of the subject property. The County-approved project is located on a beach-level parcel at 625 Beach Drive (APN 043-152-54) within the unincorporated Aptos/Rio Del Mar area of Santa Cruz County.

The appeals contend that the County's approval of a CDP for the project raises questions of consistency with the Santa Cruz County certified Local Coastal Program (LCP) because: (1) the approved new residence would be sited in a hazardous location that raises a series of questions regarding consistency with the LCP's hazards provisions, including because it would require a new building site in an area subject to coastal hazards risk, which the LCP's coastal hazards provisions prohibit; (2) the County's analysis of the approved project did not consider the maximum allowable density in the Ocean Beach Residential (RB) zoning district, and the approved project is at beach level and seaward of the toe of the bluff in an area of coastal inundation where the LCP requires that these areas be excluded from density calculations; (3) the approved project is partially sited in an area designated by the LCP Land Use Plan (LUP) as Parks, Recreation, and Open Space (O-R), and the O-R land use designation does not allow for private residential development; (4) the County's approval was based upon a series of variances (allowances for development that is inconsistent with LCP provisions), including deviations from maximum height, maximum number of stories, maximum lot coverage, and maximum floor area ratio (FAR), but the LCP does not allow for variances from site area requirements that result in the creation of additional building sites and only allows variance subject to specific findings which do not appear can be made here; and (5) the approved project would be highly visible at beach level along a popular public recreational area, and it is not clear that the LCP's stringent visual resource protection requirements have been met.

After reviewing the local record, staff recommends the Commission find that the County's approval of a CDP for the project does raise substantial LCP conformance issues, and that the Commission thus take jurisdiction over the subject CDP application for the project.

With respect to hazards, the LCP applies fairly exacting standards for development proposed in areas subject to coastal hazards, where the LCP defines such locations as "areas which are subject to physical hazards as a result of coastal processes such as landsliding, erosion of a coastal bluff, and inundation or erosion of a beach by wave action." The subject site is located on Beach Drive, which supports a beach-level residential subdivision, with homes at the base of the bluff and the sandy beach and the Pacific Ocean seaward of the homes. This development configuration – with Beach Drive and this stretch of private homes and public infrastructure sandwiched between an eroding coastal bluff and the beach/ocean – has resulted in a situation where many private homes, the road, and other infrastructure have historically been impacted by both wave/tidal action (e.g., during high tide and/or large storm and swell events) as well as by landslides (e.g., during heavy rain and runoff events). Put another way, Beach Drive area development, including the subject site, faces coastal hazards from both inland and seaward forces, and it is frequently subjected to severe flood risk, intense wave action, and landslides/debris flows, where such development is essentially only possible if safeguarded by shoreline protection devices.[1] As such, the site is located in an area subject to coastal hazards as that is understood in an LCP sense.

Furthermore, the LCP prohibits the creation of new building sites in coastal hazard areas, and even where a new building site is not created, the LCP requires that development in such areas to be set back an adequate distance so as to provide a stable building site for at least the next 100 years without a reliance on shoreline protection structures, including coastal armoring and deep piers.[2] In terms of the first criterion, the single property in question is currently developed with an existing single-family residence on the inland side of the parcel, and the project would result in a second single-family residence on the seaward side of the parcel, relying on a new building site on that seaward side to support the new residence. This is not consistent with the LCP.

And even if the project were argued to not create a new building site, which is inaccurate but considered here nonetheless, the project is not set back in such a way as

[1] See, for example: Griggs, G.B. and Battalio, B., 2025 "Short- and long-term risks of back beach development along the California coast" (*Journal of Coastal Research,* 41(1), 146-179, Charlotte (North Carolina), ISSN 0749-0208). This recent research highlights the risks associated with development at beach-level, and specifically discusses development along Beach Drive in Santa Cruz County in detail.

[2] The LCP defines a shoreline protective structure as "any structure or material, including but not limited to riprap or a seawall, placed in an area where coastal processes operate" (see LCP Implementation Plan Section 16.10.040). Not only do coastal processes operate at this location, it is, as described above, an area that is subject to coastal hazards. Thus, any structure and/or material installed as means of protection in light of such processes/hazards constitutes a shoreline protective structure. And such protective structures are not only seawalls and revetments and more typical armoring structures, but they also extend to other forms of shoreline protection, like deep piers and caissons supporting elevated living spaces, as is the case here.

to provide a stable building site for the next 100 years because there is no such area on the site that would meet that criteria. Indeed, setbacks to meet such criteria would be inland of the site inasmuch as the site is actually located at the base of the coastal bluff just above beach level. Instead, the project relies on deep piers (24 of them that are 2.5 feet in diameter and that would extend at least 43 feet from the habitable area down and into bedrock) with the habitable area elevated on these deep piers to achieve stability. Those deep piers, and the overall superstructure of which they are a part, which serves as the foundation for the proposed residence, are placed in an area where coastal processes operate, as indicated above, and thus constitute a shoreline protective device under the LCP. Although there remain some questions as to whether a structure with a shoreline protective device such as this would actually lead to a stable building site for next 100 years as is required, including as its lower levels up to an elevation of about 23 feet above sea level are intended to be sacrificial (e.g., with break-away walls) in the face of storms and flooding, there is little question that the LCP prohibits a shoreline protection device in this situation, and thus the project is not consistent with the LCP for this reason as well.

In terms of maximum allowable density, land area for density purposes at this location is calculated excluding any beaches, coastal bluffs, and the land seaward of the mean high tide line, as well as excluding areas subject to coastal inundation. In this case, the site includes portions of the inland bluff as well as everything seaward of the bluff, where the subdivision itself is on top of the beach. The area seaward of the bluff is also subject to coastal inundation. As a result, all such area is excluded from site area for density calculation purposes, and thus (a) the site area for such calculation is zero; and (b) the LCP allowed density is zero. Here, the proposed project would result in two residential units, which is more than is allowed by the LCP.[3]

Additionally, roughly half of the seaward portion of the project site where the new house would be developed is designated in the LCP's LUP as Parks, Recreation, and Open Space (O-R), and the LUP does not allow residential development in the O-R land use designation. Although the County's approval of the project dismisses this requirement, and instead concludes that residential use is compatible with the O-R land use designation, there is no LCP basis for such a conclusion (and it is difficult to see how a private residential structure could be found compatible with the O-R designation even if there were such a 'compatibility' criterion).

Furthermore, the County's approval of the project relied on variances to deviate from essentially every LCP building standard for the applicable zoning district, including allowing maximum building height, maximum number of stories, maximum lot coverage, maximum floor area ratio (FAR) to be exceeded, and minimum garage setbacks to be reduced. As an initial matter, variances to site area requirements are prohibited by the LCP when a new building site is created, as is the case with this project as described above, and thus they are not allowed by the LCP in this case. Even if they were, the LCP only allows such variances pursuant to specific findings, including that variances

[3] And even if the conversion ADU is not counted towards overall site density, as Government Code Section 66314 and IP Section 13.10.681 might suggest, the proposed new home counts as a unit, and one residential unit is more than allowed by the LCP on its own.

are based on “special circumstances applicable to the property”, that by approving the variance the County does not provide a grant of special privilege to an applicant, and that the “granting of such variance will be in harmony with the general intent and purpose of zoning objectives.” In this case, the site is not unlike other sites along Beach Drive, and there is no ‘special circumstance,’ meaning that the variances applied here lack the required basis. In addition, the variances granted by the County together culminate in a specific privilege provided only to the Applicants, by allowing for a fully detached, 2,568 square-foot ADU and for the construction of a new 2,909 square-foot residence (appearing as a 5,600 square-foot home when considering the 2,130 square-foot underfloor area), which would result in development at a scale not seen elsewhere on an individual property in the RB zoning district or along Beach Drive, and certainly not something harmonious with zoning objectives, especially for the portion of the site designated as O-R where the County-approved development is not even allowed in the first place. In terms of the degree of special privilege provided, there is not a single property in the RB zoning district with two residential units at the scale approved by the County, and allowing two here would mean that this applicant is the only property owner allowed that privilege, also inconsistent with LCP variance requirements.

Finally, in terms of public views, the LCP requires that such views and visual resources be protected and enhanced, and that new development be visually compatible with the surrounding area, including with respect to size, bulk, and design. The LCP specifically requires that public views be identified, protected, and restored, and that new development be appropriately sited, designed, and constructed in order to ensure that public views are not adversely impacted; and, prohibits the placement of new permanent structures that would be on (where the new home would be located atop the historic beach) or visible from the beach (except where allowed on existing parcels of record). In this case, the size and scale of the County-approved project relative to the surrounding area are substantial, at two stories and appearing as over 5,600 square feet of new residential development sited mere feet from the sandy recreational beach area. In fact, the house would extend to some 40 feet above sea level, and about 25 feet above the typical sandy beach elevation where beach users recreate, imposing a large structure that looms over a significant public viewshed.

Therefore, for all of the above reasons, the County-approved project raises substantial LCP conformance issues.[4]

As such, staff thus recommends that the Commission find that the appeal raises substantial LCP conformance issues and that the Commission take jurisdiction over the CDP application for the proposed project. If the Commission does so, then the de novo hearing on the merits of the CDP application would be scheduled for a future Commission meeting. The motion and resolution to implement this recommendation are found on **page 7**.

[4] In addition to these LCP consistency concerns, the project raises fundamental statewide questions regarding the appropriateness of placing significant new development, including whole-house ADUs and even larger primary residences, on beach level lots directly in harm’s way.

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EXHIBITS
Exhibit 1 – Location Maps
Exhibit 2 – Project Site Photos
Exhibit 3 – County Final Local CDP Action Notice
Exhibit 4 – County-Approved Project Plans
Exhibit 5 – Appeals of County CDP Action

CORRESPONDENCE

1. MOTION AND RESOLUTION

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

> ***Motion:*** *I move that the Commission determine that Appeal Number A-3-SCO-26-0022 raises no substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act, and I recommend a* ***no*** *vote.*
>
> ***Resolution to Find Substantial Issue:*** *The Commission hereby finds that Appeal Number A-3-SCO-26-0022 presents a substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

2. FINDINGS AND DECLARATIONS

A. Project Location

The Santa Cruz County-approved project is located at 625 Beach Drive (APN 043-152-54) in the Aptos area of south Santa Cruz County at one of the several beach-level (and pre-Coastal Act) subdivisions that dot the back beach extending downcoast from New Brighton State Beach toward the County line at the Pajaro River (e.g., beach-level subdivisions at Potbelly Beach, Las Olas, Beach Drive, etc.). The shoreline in this area is fronted by a generally continuous sandy beach that is quite popular with visitors, most of it in State Park beach units, including the Seacliff State Beach unit just upcoast of the site, as well as County beaches, such as the County's Hidden Beach County Park just downcoast. The site is located on the private and gated-off portion of Beach Drive at its downcoast end, where this part of Beach Drive includes a series of houses generally on parcels located on both sides of the road, and where this area is fronted by a concrete seawall with sandy recreational beach areas just seaward of that. This development configuration – with Beach Drive and this stretch of private homes and public infrastructure sandwiched between an eroding coastal bluff and the beach/ocean – has resulted in a situation where many private homes, the road (i.e., Beach Drive), and public and private infrastructure have historically been impacted both by wave/tidal action (e.g., during high tide and/or large storm and swell events) as well as by landslides (e.g., during heavy rain and runoff events). Put another way, the beach-level Beach Drive area can face coastal hazards from both inland and seaward forces, both of which are implicated by this project.

The project site is currently developed with a two-story, 2,568 square-foot single-family dwelling located on the inland side of Beach Drive that was originally built prior to the

implementation of the Coastal Act on January 1, 1977, and that underwent an interior remodel in 2016,[5] and what appears to be a paver-stone parking area, a shed, a stone patio, and related structures on the seaward side of Beach Drive.

See location maps and site area photos in **Exhibits 1** and **2**.

B. Project Description and History

The County's approval authorized the conversion of the existing single-family dwelling into a fully detached accessory dwelling unit (ADU) (again, located on the landward portion of the property inland of Beach Drive) and the construction of a new two-story, 2,909 square-foot single-family dwelling with over 2,130 square feet of non-habitable understory surrounded by break-away walls, and including an attached 271 square-foot garage and 294 square-foot storage area (thus appearing as over 5,600 square feet of home), where the habitable portion of the project would be elevated above the Federal Emergency Management Agency (FEMA) VE flood elevation on 24 2.5-foot diameter structural concrete piers spaced 10 feet on center and drilled at least 17 feet into bedrock (for a total pier height of about 43 feet),[6] all located on the seaward portion of the property (seaward of Beach Drive). The new single-family dwelling would be approximately 22-feet tall from grade, with the lower floor consisting of break-away walls and non-habitable understory standing approximately 6.5 feet above grade and the habitable area extending some 18 feet above that. The project also includes a stairway to ground level, an open deck, and upper-story roof cantilever extending within feet of the sandy beach area frequented by the public. See **Exhibits 3** and **4** for the County's final local CDP action notice and approved project plans, respectively.

The County's approval of the CDP for this project has a rather complicated history. To start, a nearly identical project, at that time proposed as a second unit under the provisions of Senate Bill (SB) 9, was previously reviewed and denied by the County. Specifically, County CDP application number 241334 was denied administratively by the Planning Division of the County Community Development and Infrastructure Department on May 27, 2025. The Applicants appealed that denial to the Planning Commission, which upheld the denial on July 23, 2025. The Applicants then appealed that Planning Commission denial to the Board of Supervisors, where the Board declined to overturn the Planning Commission's denial, rendering the County's final denial action on September 30, 2025. The County's CDP denial for that project was made on the grounds that the project was inconsistent with LCP provisions related to maximum allowable density and coastal hazards.

Although that original CDP application was denied, several County planning commissioners and supervisors indicated during deliberations at their respective

[5] Santa Cruz County building permit number B-153533 for an interior remodel that included removing a kitchenette, relocating a lower-level kitchen to the upper level, changing the floor plan to redesign and reconfigure rooms, and installing new air-conditioning, electrical wiring, and plumbing. Based on available evidence, it does not appear that this work received CDP authorization.

[6] The County-approved project plans indicate that the piers would extend from the habitable space approximately 26 feet to bedrock and a minimum of 17 feet into bedrock, for a total vertical pier length of at least 43 feet.

hearings that they would support some sort of project at the site, and directed County Planning Division staff to work with the Applicants to find an approval pathway for a new single-family dwelling on the seaward portion of the subject property. Accordingly, County Planning Division staff suggested to the Applicants that they could apply to (a) convert their existing single-family dwelling into a conversion ADU, and (b) construct a new single-family dwelling on the seaward portion of the property. The Applicants subsequently applied for just such a project (County CDP application number 251501), which is the project now before the Commission on appeal.

C. Santa Cruz County Approval

Specifically, on August 7, 2026 the Santa Cruz County Zoning Administrator approved a CDP for the project.[7] The County's notice of this final CDP action was received in the Coastal Commission's Central Coast District Office on August 21, 2026 (see **Exhibit 3**), triggering the Coastal Commission's ten-working-day appeal period, which concluded at 5pm on September 4, 2026. Two valid appeals were received during the appeal period (see **Exhibit 5**).

D. Appeal Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area;[8] or (b) for counties, approval of CDPs for development that is not designated as a principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This County CDP decision for the project is appealable to the Commission because the project site is located between the first public road and the sea, within 300 feet of the inland extent of the beach and the seaward face of the coastal bluff, and within an area that constitutes a sensitive coastal resource area under the LCP.[9]

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[7] It is noted that the County charges a fee for appeals of Zoning Administrator CDP decisions to the Planning Commission. As a result, potential appellants are not required to exhaust local appeals through the Board in order to gain standing to appeal to the Coastal Commission (see Section 13573(a)(4) of the Commission's regulations), but rather can appeal directly to the Commission. And in this case that is exactly what happened, where those potential appellants bypassed paying a fee and a Planning Commission appeal, and appealed the Zoning Administrator decision directly to the Commission.

[8] Other than multifamily housing projects located in a sensitive coastal resource area that consist exclusively of residential uses and include four or more units.

[9] IP Section 13.20.040 defines sensitive coastal resource areas to include "[h]ighly scenic areas, including as mapped on the LCP maps," where the project site is mapped as a "scenic area" in the LCP coastal resource maps.

Although the project clearly is located within the Commission's geographic appellate jurisdiction, it is noted that the Applicants do not believe this project is appealable pursuant to Government Code Section 66329(c). This section, amended in October 2025 via AB 462, states that "any decision of a local government pursuant to subdivision (a)[10] is not subject to appeal under Section 30603 of the Public Resources Code." Thus, local government ADU CDP approvals are not appealable to the Commission, regardless of their location and whether they otherwise satisfy the criteria for appealability. A few things should be noted here. First, the Commission, in cooperation with staff at the California Department of Housing and Community Development (HCD, which generally oversees state ADU law compliance) understands this non-appealability provision to apply only to CDPs approving ADU-only projects.[11] The reason for this is that the law is clearly targeted to and meant to streamline the construction of ADUs as an important source of naturally occurring affordable housing, but not other types of development. This project is clearly not just an ADU-only project, but also includes construction of a new over 2,900 square-foot single-family residence. As such, this project does not qualify for AB 462's appealability exemption.

The Applicant nonetheless disagrees, stating that the Commission's interpretation is not consistent with the intent or plain language of Section 66329(c), which does not specifically limit non-appealability to solely ADU-only projects. However, interpreting the law as the Applicant suggests would result in an end around of coastal resource protection by offering applicants the ability to bypass the Commission's oversight just by including an ADU in their project. That could mean that entire subdivisions and other significant projects would not be appealable just because they included an ADU. That is clearly not the intent of the law. In addition, even if the Applicants are correct and the ADU portion of the project is not appealable, the project still includes a new single-family residence, and it is actually this residence that raises much of the LCP conformance concerns, as explained more in the subsequent analysis. Finally, Commission staff reached out directly to HCD to understand their position regarding the Applicants' claims, and HCD staff agreed that this project was appealable to the Commission because it was not an ADU-only project, rather it was a project that included a house and an ADU.[12]

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

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[10] Subdivision (a) (i.e., Government Code Section 66329(a)) provides the authority for local governments to "either approve or deny a coastal development permit application for an accessory dwelling…".

[11] See the Commission's "ADU LCP Processing Guidance" at https://documents.coastal.ca.gov/assets/SB1077/Final_SB1077_Guidance.pdf, where page 6 states "AB 462 makes coastal development permits (CDPs) approved by local governments for ADU-only (or JADU-only) projects no longer appealable to the Commission."

[12] See HCD correspondence dated October 14, 2026, concluding that "we do not see the Coastal Commission's hearing of the appeal as conflicting with State ADU Law."

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

The Coastal Act and the Commission's implementing regulations are structured such that there is a presumption of a substantial issue when the Commission acts on this question, and the Commission generally considers a number of factors in making that determination. At this stage, the Commission may only consider issues brought up by the appeal. At the substantial issue hearing, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no such hearing is requested, a substantial issue is automatically found. In both cases, when the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

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

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

E. Summary of Appeal Contentions

The appeals contend that the County-approved project raises questions of consistency with the Santa Cruz County certified LCP because: (1) the approved new residence would be sited in a hazardous location that raises a series of questions regarding consistency with the LCP's hazards provisions, including because it would require a new building site in an area subject to coastal hazards risk, which the LCP's coastal

hazards provisions prohibit; (2) the County's analysis of the approved project did not consider the maximum allowable density in the Ocean Beach Residential (RB) zoning district, and the approved project is at beach level and seaward of the toe of the bluff in an area of coastal inundation where the LCP requires that these areas be excluded from density calculations; (3) the approved project is partially sited in an area designated by the LCP Land Use Plan (LUP) as Parks, Recreation, and Open Space (O-R), and the O-R land use designation does not allow for private residential development; (4) the County's approval was based upon a series of variances (allowances for development that is inconsistent with LCP provisions), including deviations from maximum height, maximum number of stories, maximum lot coverage, and maximum floor area ratio (FAR), but the LCP does not allow for variance approvals that result in the creation of additional building sites and only allows variance subject to specific findings which do not appear can be made here; and (5) the approved project would be highly visible at beach level along a popular public recreational area, and it is not clear that the LCP's stringent visual resource protection requirements have been met. See **Exhibit 5** for the appeal contentions.

F. Substantial Issue Determination

1. Substantial Issue Background

The term substantial issue is not defined in the Coastal Act. Rather, the Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603 (Section 30625(b)(2)). And the Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no substantial issue…" (California Code of Regulations, Title 14, (CCR) Section 13115(b)). CCR Section 13115(c) also provides that the Commission may consider the following five factors when determining if a local action raises a significant issue: 1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP; 2) the extent and scope of the development as approved or denied by the local government; 3) the significance of the coastal resources affected by the decision; 4) the precedential value of the local government's decision for future interpretations of its LCP; and 5) whether the appeal raises only local issues, or those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In this case, for the reasons discussed further below, the Commission determines that the appeal regarding the County's approval of a CDP for the project presents substantial LCP conformance issues.

2. Coastal Hazards

Applicable LCP Provisions

The appeals contend that the County-approved project raises LCP coastal hazards consistency issues related to siting new development within coastal hazard areas, including because the LCP prohibits new building sites within coastal hazard areas, and

that the County-approved project would result in a new building site in such a location. The relevant LCP coastal hazards provisions include:

> ***LUP Policy 6.2.10: Site Development to Minimize Hazards.*** *Require all developments to be sited and designed to avoid or minimize hazards as determined by the geologic hazards assessment or geologic and engineering investigations.*
>
> ***LUP Policy 6.2.12: Setbacks from Coastal Bluffs.*** *All development activities, including those which are cantilevered, and non-habitable structures for which a building permit is required, shall be set back a minimum of 25 feet from the top edge of the bluff. A setback greater than 25 feet may be required based on conditions on and adjoining the site. The setback shall be sufficient to provide a stable building site over the 100-year lifetime of the structure, as determined through geologic and/or soil engineering reports. The determination of the minimum 100-year setback shall be based on the existing site conditions and shall not take into consideration the effect of any proposed shoreline or coastal bluff protection measures.*
>
> ***LUP Policy 6.2.15: New Development on Existing Lots of Record.*** *Allow development activities in areas subject to storm wave inundation or beach or bluff erosion on existing lots of record, within existing developed neighborhoods, under the following circumstances: (a) A technical report (including a geologic hazards assessment, engineering geology report and/or soil engineering report) demonstrates that the potential hazard can be mitigated over the 100-year lifetime of the structure. Mitigations can include, but are not limited to, building setbacks, elevation of the structure, and foundation design; (b) Mitigation of the potential hazard is not dependent on shoreline or coastal bluff protection structures, except on lots where both adjacent parcels are already similarly protected; and (c) The owner records a Declaration of Geologic Hazards on the property deed that describes the potential hazard and the level of geologic and/or geotechnical investigation conducted.*
>
> ***LUP Policy 6.2.16: Structural Shoreline Protection Measures.*** *Limit structural shoreline protection measures to structures which protect existing structures from a significant threat, vacant lots which through lack of protection threaten adjacent developed lots, public works, public beaches, or coastal dependent uses. …*
>
> ***LUP Policy 6.2.17: Prohibit New Building Sites in Coastal Hazard Areas.*** *Do not allow the creation of new building sites, lots, or parcels in areas subject to coastal hazards, or in the area necessary to ensure a stable building site for the minimum 100-year lifetime, or where development would require the construction of public facilities or utility transmission lines within coastal hazard areas or in the area necessary to ensure a stable building site for the minimum 100-year lifetime.*
>
> ***LUP Glossary: Coastal Hazard Areas.*** *Areas which are subject to physical hazards as a result of coastal processes such as landsliding or erosion of a coastal bluff, and inundation or erosion of a beach by storm and tsunami waves.*

Parcels in coastal hazard areas are subject to the Geologic Hazards ordinance.

***IP Section 13.10.700-B: "Building Site"** means an area of land occupied by or proposed as a location for a building or for a manufactured or mobile home on a permanent foundation.*

***IP Section 16.10.040: Definitions.** … **(13) "Coastal Hazard Areas"** means areas which are subject to physical hazards as a result of coastal processes such as landsliding, erosion of a coastal bluff, and inundation or erosion of a beach by wave action.*

***IP Section 16.10.070(H)(7): Creation of New Parcels and Location of New Building Sites.** New parcels or building sites created by minor land divisions, subdivisions or development approvals or permits, and multi-residential structures in coastal hazard areas shall conform to the following criteria: (a) Demonstration by a full geologic report that each proposed building site on the parcel is not subject to any potential hazards and that each site meets the minimum setback given in subsection (H)(1) of this section; (b) Determination by the Planning Director based on the geologic report that the long-term stability and safety of the development does not depend on or require shoreline protection structures. …*

***IP Section 16.10.070(H)(1): Criteria in Areas Subject to Coastal Bluff Erosion.** Projects in areas subject to coastal bluff erosion shall meet the following criteria: (a) For all development and for nonhabitable structures, demonstration of the stability of the site, in its current, pre-development application condition, for a minimum of 100 years as determined by either a geologic hazards assessment or a full geologic report; (b) For all development, including that which is cantilevered, and for nonhabitable structures, a minimum setback shall be established at least 25 feet from the top edge of the coastal bluff, or alternatively, the distance necessary to provide a stable building site over a 100-year lifetime of the structure, whichever is greater; and, (c) The determination of the minimum setback shall be based on the existing site conditions and shall not take into consideration the effect of any proposed protection measures, such as shoreline protection structures, retaining walls, or deep piers. …*

Within this framework, as applicable here, the LCP applies fairly exacting standards for development proposed in areas subject to coastal hazards, where the LCP defines such locations as "areas which are subject to physical hazards as a result of coastal processes such as landsliding, erosion of a coastal bluff, and inundation or erosion of a beach by wave action." The LCP prohibits the creation of new building sites in coastal hazard areas, and even where a new building site is not created, the LCP requires that development in such areas to be set back an adequate distance so as to provide a stable building site for at least the next 100 years without a reliance on shoreline

protection structures, including coastal armoring and deep piers.[13]

Analysis

The subject site is located on Beach Drive, which supports a beach-level residential subdivision, with homes at the base of the bluff and the sandy beach and the Pacific Ocean seaward of the homes. This development configuration – with Beach Drive and this stretch of private homes and public infrastructure sandwiched between an eroding coastal bluff and the beach/ocean – has resulted in a situation where many private homes, the road, and other infrastructure have historically been impacted both by wave/tidal action (e.g., during high tide and/or large storm and swell events) as well as by landslides (e.g., during heavy rain and runoff events). Put another way, Beach Drive area development, including the subject site, faces coastal hazards from both inland and seaward forces, and it is frequently subjected to severe flood risk, intense wave action, and landslides/debris flows, where such development is essentially only possible if safeguarded by shoreline protection devices.[14] As such, the site is located in an area subject to coastal hazards as that is understood in an LCP sense.

As to the building site criterion, in its analysis of the project, the County staff report for the approved CDP states:

> *The proposed project has resolved previous compliance issues cited in the recommendation for denial of application 241334,[15] in that this revised proposal utilizes a portion of an existing building site, rather than creating a new site…*

However, it is unclear how this conclusion was reached by the County, including because the approved new single-family dwelling would be located across Beach Drive from the existing single-family dwelling (to be converted in its entirety into a fully detached ADU) on the seaward side of the road in an entirely new location for residential development, where there have only been relatively minor surface

[13] The LCP defines a shoreline protective structure as "any structure or material, including but not limited to riprap or a seawall, placed in an area where coastal processes operate" (see LCP Implementation Plan Section 16.10.040). Not only do coastal processes operate at this location, it is, as described above, an area that is subject to coastal hazards. Thus, any structure and/or material installed as means of protection in light of such processes/hazards constitutes a shoreline protective structure. And such protective structures are not only seawalls and revetments and more typical armoring structures, but they also extend to other forms of shoreline protection, like deep piers and caissons supporting elevated living spaces, as is the case here.

[14] See, for example: Griggs, G.B. and Battalio, B., 2025 "Short- and long-term risks of back beach development along the California coast" (*Journal of Coastal Research,* 41(1), 146-179, Charlotte (North Carolina), ISSN 0749-0208). This recent research highlights the risks associated with development at beach-level, and specifically discusses development along Beach Drive in Santa Cruz County in detail.

[15] County CDP application 241334, as noted previously, was a nearly identical proposal for a second unit under SB 9, which was denied by the County.

improvements,[16] but not a building.[17] As noted above, the LCP defines a building site as "an area of land…proposed as a location for a building." A plain reading of this definition suggests that anywhere a new building is proposed, particularly for a second residential unit or subdivision that provides for an increase in the intensity of use at a particular location, meets the definition of a new building site. The County's finding that the project would only use a portion of an existing building site does not appear to be consistent with the LCP's definition nor given sufficient analytical justification. Given the importance of this provision in serving as an arbiter if whether or not new development is permissible in the first place, the County's findings regarding whether the project includes a new building site raises a substantial LCP conformance issue.

And even if the project were argued to not create a new building site, which is inaccurate but considered here nonetheless, the project is not set back in such a way as to provide a stable building site for the next 100 years because there is no such area on the site that would meet that criteria. Indeed, setbacks to meet such criteria would be inland of the site inasmuch as the site is actually located at the base of the coastal bluff and on top of what was historically a beach. Instead, the project relies on deep piers (24 of them that are 2.5 feet in diameter and that would extend at least 43 feet from the habitable area down and into bedrock) with the habitable area elevated on these deep piers to achieve stability. Those deep piers, and the overall superstructure of which they are a part, which serves as the foundation for the proposed residence, are placed in an area where coastal processes operate, as indicated above, and thus constitute a shoreline protective device under the LCP. And, IP Section 16.10.070(H)(1)(c) does not allow the required 100 years of stability to be determined by taking into consideration the effect of any shoreline protection devices, including deep piers. Although there remain some questions as to whether a structure with a shoreline protective device such as this would actually lead to a stable building site for next 100 years as is required, including as its lower levels up to an elevation of about 23 feet above sea level (and approximately 7 feet above natural grade) are intended to be sacrificial (e.g., with break-away walls) in the face of storms and flooding, there is little question that the LCP prohibits a shoreline protection device in this situation, and thus the project raises LCP conformance issues with this point as well.

Additionally, for the sake of the argument and should there still be question that the proposal would not create a new building site, which there is not, it should be noted that LUP Policy 6.2.15(b) and IP Section 16.10.070(H)(3)(a) include an allowance for

[16] Landscaping, paving, and what appears to be patio pavers on the seaward side of Beach Drive on the subject property (where the approved new single-family dwelling would be located) were originally installed without the benefit of a CDP, but were subsequently approved after-the-fact by County CDP 221192 (Commission final local action notice number 3-SCO-23-0477) which also required the removal of a 120 square-foot non-habitable storage shed.

[17] IP Section 13.10.700-B defines "building" as "any permanent structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of any person, animal, or property, but not including mobile homes (see [IP] § 13.10.700-M), manufactured homes (see [IP] § 13.10.700-M), commercial modular as defined in the California Health and Safety Code, or any tent, recreational vehicle, or other non-permanent structure." Notably, the aforementioned storage shed was required to be removed pursuant to County CDP 221192, and thus the current analytical baseline for the site is that without any buildings present.

shoreline protection if both adjacent parcels are already similarly protected.[18] It appears that both adjacent structures (624 and 626 Beach Drive) on either side of where the new single-family dwelling would be located are elevated, at least to some extent, on pier foundations, and are fronted by a seawall, just like the subject site. On the other hand, as discussed above, IP Section 16.10.070(H)(1)(c) does not allow for new development to rely on proposed engineering measures for site stability, including deep piers. Accordingly, the LCP could conceivably be construed to include two competing LCP directives, one that would allow a shoreline protection device, including deep piers, to protect new development and ensure site stability if adjacent sites are similarly protected (LUP Policy 6.2.15(b) and IP Section 16.10.070(H)(3)(a)) and one that does not (IP Section 16.10.070(H)(1)(c)).[19] In evaluating that conflict, it is also informative to review the LUP and IP provisions that identify when armoring is allowed, specifically LUP Policy 6.2.16 and IP Section 16.10.070(H)(3), both of which only allow armoring to "protect existing structures from a significant threat" and "vacant lots which through lack of protection threaten adjacent developed lots" in this residential context, and do not include an exception in the event that adjacent properties are similarly protected. Similarly, LUP Policy 6.2.17 and IP Section 16.10.070(H)(7)(b) "do not allow the creation of new building sites, lots, or parcels in areas subject to coastal hazards" and require that such lots do "not depend on or require shoreline protection structures," respectively, evincing an LCP intent that new development is simply not allowed armoring.

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[18] IP Section 16.10.070(H)(3)(a) states, in relevant part, that "shoreline protection structures shall only be allowed on parcels where both adjacent parcels are already similarly protected…"

[19] And in that evaluation, it is immaterial whether IP Section 16.10.070(H)(1)(c) says one or the other, as IP provisions are required to be consistent with the LUP, and LUP policies take precedence. This proposition is based on *McAllister v. Cal. Coastal Com'n* (2008) 169 Cal.App.4th 912, 930-932 (discussed further below), which held that: "Although local governments are responsible for drafting the 'precise content' of their local coastal programs, those subdivisions must, at a minimum, conform to and not conflict with the resource management standards and policies of the [Coastal] Act," and as such, any ambiguities must be interpreted as being consistent with the Coastal Act standards This legal point can be traced to Section 30512(c) of the Coastal Act, which requires that an LUP "meet the requirements of, and is in conformity with, the policies of Chapter 3." Given that Coastal Act Section 30513 contains an analogous requirement, requiring IPs to conform with, and be adequate to carry out, the provisions of a certified LUP, we can extend the *McAllister* rationale from interpreting LCPs to ensure conformity with the Coastal Act, to interpreting IPs so as to ensure conformity with the LUP.

It is also worth noting that the Coastal Act precedence over an LCP and an LUP precedence over an IP is further substantiated by the law regarding General Plans and zoning codes (the analogs to LUPs and IPs outside of the coastal zone, respectively). For example, as stated in *Napa Citizens for Honest Gov't v. Napa County Bd. Of Sup.* (2001) 91 Cal.App.4th 342, 389: "A zoning ordinance that is inconsistent with the general plan is invalid when passed and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan. The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform."

Considering *McAllister* and *Napa Citizens*, with respect to the Coastal Act, it is much more reasonable to conclude that when a certified LUP provision conflicts with a certified IP provision, the certified LUP provision controls (and the conflicting IP provision must be brought into conformity with the certified LUP). In other words, any conflict or interpretation in the LUP gets resolved in the LUP, and that interpretation is then applied in the IP.

Further, in order to resolve any questions of LCP interpretation, including explicitly if an LCP policy is unclear as to its meaning, the LCP includes an interpretation provision.[20] Namely, the LUP states:

> *In any case in which the interpretation or application of an LCP policy is unclear, as that policy may relate to a particular development application or project, the application or interpretation of the policy which most clearly conforms to the relevant Coastal Act policy shall be utilized.*

Thus, the LCP directs that the Coastal Act is the final arbiter for any questions in the event of potential policy conflicts. The question here, in terms of the Coastal Act, involves the application of Coastal Act Sections 30235 and 30253, both of which apply to shoreline protection devices. Specifically, Section 30235 only allows shoreline protection devices that are otherwise inconsistent with other Chapter 3 policies where required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and only when the armoring's coastal resource impacts (related to coastal resource protection under 30235, but also under all other Chapter 3 provisions) are eliminated or mitigated. Section 30253 requires that new development be sited, designed, and built to assure stability and structural integrity in a manner so as (a) to not require shoreline protective devices that would substantially alter natural landforms along the shoreline; and/or, (b) to neither create nor contribute significantly to destruction of the site or surrounding area. In other words, the Coastal Act recognizes the impacts that accrue to shoreline protection devices, and the Coastal Act clearly prohibits such shoreline protection devices to protect new development, as is required for the approved project's stability over the LCP-required 100-year site stability timeframe, and does not include an exception in the event that adjacent sites are similarly protected. Thus, to the extent that the LCP includes conflicting interpretations, they must be resolved in favor of the Coastal Act's stated policies. In this case, the Coastal Act does not provide an exception to the prohibition of shoreline protection devices, such as the deep piers and foundation superstructure proposed here that are shoreline protection devices under the LCP, to protect new development in the event of adjacent sites being similarly protected.

Finally, and amplifying that Coastal Act direction as it applies to this situation via the LCP's interpretation provision, courts have recognized that LCPs must, at a minimum, conform to and not conflict with the resource management standards and policies of the Coastal Act.[21] As the 6th District Court of Appeal stated in 2008 in a published decision in a case known as *McAllister*:[22]

> *Generally, "[w]e presume that the Legislature, when enacting a statute, was aware of existing related laws and intended to maintain a consistent body of rules." (Stone Street Capital, LLC v. California State Lottery Comm. (2008) 165*

[20] LUP Chapter 1, Interpretation Section (LUP page 1-28).

[21] See *McAllister v. CCC* (2008) 169 Cal.App.4th 912, 930 n.9 ("A local coastal program need not be identical to the Coastal Act. As long as a local coastal program is not inconsistent with the Coastal Act, it can be more restrictive.") (internal citations omitted)

[22] *Id*, at 930-31.

> *Cal.App.4th 109, 118)[.] The presumption applies as well to County legislation. Thus, we presume the County was aware that the Coastal Act established the minimum standards and policies for local coastal programs and knew that, in drafting its local coastal program, it was constrained to incorporate both development restrictions in section 30240(a). Accordingly, we assume that, as required, the County intended to and did incorporate those restrictions.*

Although the Court in *McAllister* was interpreting the environmentally sensitive habitat provisions of the Coastal Act, the same principles apply here. Coastal Act Sections 30235 and 30253 together state that new development may not rely on shoreline protection devices, which include deep piers, and thus the County's LCP must be interpreted to conform with these minimum standards set forth in the Coastal Act. Thus, to the extent that there still exists any question of interpretation of the policies at issue, they are further settled by the Court's decision in *McAllister*.

Further, such a conclusion is also supported by the Commission's duty to protect public trust resources, and the Coastal Act requirement that the Act "shall be liberally construed to accomplish its purposes and objectives" (Section 30009), where, as described, the Act on this point protects these natural shoreline and beach resources and only allows for shoreline protection devices as an exception under extremely narrow criteria. In addition, the purpose and structure of the Coastal Act support such an interpretation as well, as reflected in numerous policies of the Act. For example, not only does Section 30009 require a liberal interpretation to protect shoreline and beach resources, but Section 30007.5 also directs the Commission to resolve conflicts in a manner that is "most protective of significant coastal resources." Courts have relied on Section 30009 to find that exceptions to the Act's requirements must be read narrowly.[23]

To summarize, and bracketing whether there even is an internal inconsistency and/or a lack of clarity, given that a plain reading of the LCP leads to a conclusion that project applicants cannot propose to use shoreline protection devices, including deep piers, in establishing site stability in a location subject to coastal hazards, the Commission finds it appropriate, given any potential inconsistency or lack of clarity, to defer to the most environmentally protective option, which in this case requires LCP policies to be read together to mean that site stability over a 100-year period must be determined without considering the effects of <u>any and all</u> shoreline protection measures, whether or not adjacent sites are similarly protected.

And if there was any question that the site is an area subject to coastal hazards, the County-approved project would be located in an area designated as a VE Zone pursuant to FEMA,[24] already subject to significant storms and wave attack on a regular basis, oftentimes leading to significant damages. And such threats are only expected to

[23] See, for example, *Citizens for a Better Eureka v. California Coastal Com.* (2011) 196 Cal.App.4th 1577, 1586-87 ("[i]n light of the legislative directive to construe the Act liberally...it is appropriate to construe the exceptions narrowly"", *quoting Capon v. Monopoly Game LLC* (2011) 193 Cal.App.4th 344, 355).

[24] A 'VE Zone' refers to the FEMA designation applied to this area as a Special Flood Hazard Area and Regulatory Floodway, which is also considered a 'Coastal High Hazard Area' under IP Section 16.10.040(14).

worsen over time with expected sea level rise.[25] The State of California has undertaken significant research to understand how much sea level rise to expect over this century, and to anticipate its likely impacts over various sea level rise levels and timing scenarios. Most recently, the California Ocean Protection Council (OPC) published and adopted the 'State of California Sea Level Rise Guidance: 2024 Science and Policy Update' (2024 Guidance), which updates and replaces the previous 2018 State Guidance, and synthesizes the best available science on sea level rise and coastal hazards, including the 2022 National Oceanic and Atmospheric Administration (NOAA) Sea Level Rise technical report. The 2024 Guidance is currently considered the best available science on sea level rise for the State of California, and it includes guidance and recommendations for incorporating this information into decision-making.[26] These projections and recommendations are also incorporated in the 2024 update to the Coastal Commission's Sea Level Rise Policy Guidance, which was adopted in November 2024.[27]

Notably, the 2024 Guidance provides a set of scenarios that OPC recommends using when assessing potential sea level rise vulnerabilities for various types of projects. Applicable to Santa Cruz County's coastal zone, the updated sea level rise scenarios in the 2024 Guidance suggest sea levels could rise between 0.8 and 6.4 feet by 2100 at the Monterey tide gauge,[28] depending on future greenhouse gas emissions and other factors. The 2024 Guidance recommends that development of less adaptive, long lifespan, more vulnerable projects, including residential development, use the intermediate-high scenario to inform decisions regarding development. As applicable to Santa Cruz County, the intermediate-high scenario for 2100 is 4.6 feet. For beach level development seaward of coastal bluffs in Santa Cruz County, where the base elevation is typically some 5 to 10 feet above the beach and not much more than that above sea level, such sea level rise only exacerbates all of the current coastal hazard dangers that these properties face.

As our understanding of sea level rise continues to evolve, sea level rise projections will continue to evolve as well (as evidenced by the recent updates to best available science). While it is uncertain exactly how much sea levels will rise and when, it is clear the sea levels will continue to rise and it is critical to continue to assess hazards associated with sea level rise when planning for future development. Importantly, maintaining a precautionary approach that considers high or even extreme sea level rise rates and plans for future adaptation will help promote resiliency in coastal

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[25] Importantly, Coastal Act Section 30270 states that "[t]he commission shall take into account the effects of sea level rise in coastal resource planning and management policies and activities in order to identify, asses, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise."

[26] See "OPC State of California Sea Level Rise Guidance, 2024 Science and Policy Update" at https://opc.ca.gov/wp-content/uploads/2024/05/California-Sea-Level-Rise-Guidance-2024-508.pdf.

[27] See https://documents.coastal.ca.gov/assets/slr/guidance/2024/2024AdoptedSLRPolicyGuidanceUpdate.pdf.

[28] The 2024 Guidance provides sea level rise projections for 14 California tide gauges and recommends using the projects from the tide gauge closest to a given location. For Santa Cruz County, the Monterey tide gauge is the closest such gauge. The projections for the Monterey tide gauge can be found on page 89 of the 2024 Guidance.

California communities. This is particularly important at low-lying locations such as those seaward of coastal bluffs in Santa Cruz County, including where the County-approved project would be located.

On the California coast, sea level rise will result in the landward migration of the intersection of the ocean with the shore, which will cause increased flooding, erosion, and storm impacts in coastal areas. On a relatively flat beach, with a slope of 40:1, a simple geometric model of the coast indicated that every centimeter of sea level rise will result in a 40-centimeter landward movement of the ocean/beach interface. For these residential subdivisions seaward of bluffs in the County, even a one foot or so rise would be expected to completely inundate the beach, bringing the ocean right up to the edge of residential development. Again, this situation already happens at certain times of the year with resultant damage, and is only expected to occur more frequently and more severely with higher sea levels.

Moreover, accompanying this rise in sea level will be an increase in wave heights and wave energy. Along much of the California coast, bottom depths control nearshore wave heights, with bigger waves occurring in deeper water. Because the energy of a wave increases with the square of a wave's height, a small increase in wave height can cause a significant increase in wave energy and wave damage. Combined with the physical increase in water elevation, a small rise in sea level can expose previously protected backshore development to increased wave action, and those areas that are already exposed to wave action will be exposed more frequently, with higher wave forces. For this reason, structures that protect against current storm conditions may not provide adequate protection in the future.[29] Thus, rising sea levels currently, and will continue to, exacerbate hazards along the County's shoreline (including inundation, storm flooding, and erosion), and shoreline development – and especially low-lying, roughly beach level development – will likely experience increasingly hazardous conditions over time. Changing conditions could also alter the anticipated impacts of the development upon coastal resources. It is for these types of reasons that the LUP prohibits the creation of new building sites in these hazardous areas, which is <u>especially</u> important for those areas seaward of the bluff.

In addition, a helpful tool to assess these impacts caused by sea level rise is the United States Geological Survey's (USGS) Coastal Storm Modeling System (CoSMoS), which considers future flood hazards, shoreline retreat, and erosion.[30] In the case of Beach Drive and other beach-level areas in Santa Cruz County, CoSMoS indicates that these areas are likely to experience flooding under various scenarios. In fact, CoSMoS shows many such areas subject to flooding with 4.6 feet of sea level rise (the intermediate-high

[29] Further, 2019 research indicates that climate change has also increased the force of waves hitting the shore. Waves are generated by wind, and the study found that as air temperatures have warmed, waves worldwide became 0.4% more powerful every year between 1948 and 2008. In other words, waves are 24% stronger than they were in the middle of the 20th century (see Reguero, B.G., Losada, I.J. & Méndez, F.J. "A recent increase in global wave power as a consequence of oceanic warming", Nat Commun 10, 205 (2019) https://www.nature.com/articles/s41467-018-08066-0).

[30] An interactive CoSMoS hazards map is available on the USGS's "Our Coast, Our Future" website at: https://ourcoastourfuture.org/hazard-map/.

risk scenario by 2100) and even more vulnerable with 6.4 feet of sea level rise (the high-risk scenario by 2100), when paired with an annual storm event. And, naturally, these projected flood levels rise even more so when paired with the 20-year storm event, and thus it is entirely expected that both existing and new development along these coastal hazards areas will be affected by serious coastal flooding on at least an annual basis within the lifetime of many such structures (as is already witnessed on a regular basis, and in particularly during winter storm cycles), and especially so for new residential development where expected lifespans are typically on the order of 75 to 100 years. And while these projections serve as an important tool in planning where new development should, or should not, be located, recent examples further support this conclusion. For example, during the severe winter storms of January 2023, the house at 535 Beach Drive, located some 800 feet upcoast from the subject property, was lifted completely from its cement pier foundation and rafted 30 feet towards the coastal bluff, and has since been demolished.[31]

Thus, in this context, it is clear that the County-approved project would be located in a coastal hazard area. The site is mapped as a Coastal High Hazard Area under the LCP and designated as a Special Flood Hazard Area per FEMA, and also currently experiences significant flooding and erosion risk that is only expected to be worsened over time. And, as described previously, the project would result in the creation of a new building site in such a hazardous location, which the LCP expressly prohibits. In addition, the project is located at beach level seaward of the coastal bluff, thereby raising consistency concerns with respect to the LCP's minimum setback of 25 feet landward of the bluff edge, and proposes to minimize risk and provide for structural stability by using an elevated pier system, where the LCP is clear that new development cannot mitigate risk by using such deep piers. Therefore, for these reasons, the Commission finds that the County-approved project raises a substantial consistency issue with respect to LCP coastal hazard provisions.

3. Allowable Density in RB Zoning District

Applicable LCP Provisions

The appeals contend that the County's analysis of the approved project did not consider the maximum allowable density in the Ocean Beach Residential (RB) zoning district (where the County-approved project would be located), and the approved project is at beach level and seaward of the toe of the bluff, but the LCP requires that these areas be excluded from density calculations. Relevant LCP provisions include:

> ***LUP Glossary: Density.*** *The number of primary dwelling units or the number of people per acre of land or other given land area. Appropriate housing, population and employment density ranges are provided for each land use designation in the General Plan. Maximum allowed housing density is calculated as follows: (1) Within the USL/RSL, maximum density is based on gross site area, minus any coastal bluffs, beaches, and all land seaward of the mean high tide line of Monterey Bay. …*

[31] See https://www.santacruzsentinel.com/2023/01/06/ocean-surges-rocks-rio-del-mar/.

> ***LUP Policy 6.2.18.1: Density Calculations.*** *Exclude areas subject to coastal inundation, as defined by geologic hazard assessment or full geologic report, from use for density calculations.*
>
> ***IP Section 13.10.323(B)(1): Calculation of Land Area.*** *Inside the urban services line or rural services line, land area is based on gross site area, minus any coastal bluffs, beaches, and land seaward of the mean high tide line of Monterey Bay. …*
>
> ***IP Section 13.10.323(B)(3)(c): RB Ocean Beach Residential District.*** *Minimum land area per dwelling unit is 4,000 square feet.*
>
> ***IP Section 13.10.700-S: "Site area, gross"*** *means the total horizontal area included within the property lines of a site, excluding any coastal bluffs, beaches, and land seaward of the mean high tide line of Monterey Bay. Gross site area is used in calculations of floor area ratio and calculations related to density for urban parcels.*

As cited above, the LCP requires that areas subject to coastal inundation are excluded from density calculations, and that land area in urban parcels (such as the subject property) is determined by gross site area, excluding any coastal bluffs, beaches, and land seaward of the mean high tide line of Monterey Bay.

Analysis

As previously discussed, the County-approved project includes the construction of a new two-story single-family dwelling at beach level along Beach Drive, located on what was historically a beach prior to the subdivision and subsequent development of the subject property (which occurred prior to the implementation of the Coastal Act) backed by steep coastal bluffs. The geologic report prepared for the project[32] further supports the idea that the subject site is considered a beach, and is backed by steep coastal bluffs, stating:

> *The subject property lies atop a broad beach fronting the coastal bluff near Rio Del Mar. The bluff that backs the beach here is one of many such bluffs along the northern coast of Monterey Bay, characterized by gently dipping, late Tertiary marine sedimentary rocks that are overlain by nearly horizontal, Quaternary terrace deposits chiefly of marine origin, as well as recently deposited beach sands and artificial fill.*

The LCP directs that beaches and coastal bluffs, as well as areas subject to coastal inundation, be excluded from site area and density calculations. The intent of such standard is to ensure that new development is not placed on/within these sensitive locations including for safety/structural stability purposes as well as to prevent inappropriate encroachment on public recreational lands, and to ensure that

[32] "Geologic Investigation – Second Primary Residence, 625 Beach Drive, Aptos, California, County of Santa Cruz APN 043-152-54" dated October 18, 2023 and prepared by Pacific Crest Engineering.

development is appropriately scaled in proportion to the area actually suitable for development. To the extent that the subject site is no longer considered a true "sandy beach" and rather now constitutes a residential subdivision on top of a historical beach area, this location is still subject to coastal inundation as previously described in detail. As such, because the entire site includes portions of the inland bluff as well as everything seaward of the bluff and sits atop a historical beach, and is subject to coastal inundation, the effective developable area of the subject property is zero. Notably, the LCP further requires that the minimum land area per dwelling unit in the RB zoning district is 4,000 square feet, and this figure cannot include beaches, coastal bluffs, or areas subject to coastal inundation. However, the County staff report for the approved project does not analyze this issue, rather it simply concludes, without discussion, that "the development configure (*sic*) of primary dwelling and ADU would not conflict with density limitations for the site."

In short, the County's action here included no density analysis and includes no supporting documentation to support a finding that the project is consistent with the LCP's allowable density requirements. And, as described, all of the site is excluded from site area for density calculation purposes, and thus (a) the site area for such calculation is zero; and (b) the LCP allowed density is zero. Here, the proposed project would result in two residential units, which is more than is allowed by the LCP.[33] Thus, the County's CDP approval raises a substantial LCP conformance issue with regard to the allowable density in the RB zoning district.

4. Parks, Recreation, and Open Space Land Use Designation

Applicable LCP Provisions

The appeals contend that the County-approved project would partially site the new residence in an area designated by the LUP as Parks, Recreation, and Open Space (O-R), and the O-R land use designation does not allow for private residential development. The LCP states:

> ***LUP Policy PPF-1.2.1: Parks, Recreation, and Open Space Uses (O-R).*** *The O-R designation shall characterize land intended for outdoor recreation and the provision of open space for the purpose of facilitating healthy communities and the community's enjoyment of the natural setting of the County, including commercial recreation, County, state and federal parks, campgrounds, recreational vehicle parks, preserves and biotic research stations. O-R is appropriate for:*
>
> - *Active recreation uses, such as golf courses, stables, swimming pools, sports courts, athletic fields, camping, picnicking areas, community centers, outdoor entertainment and historically themed parks that are compatible with rural and mountain settings and that provide expanded recreation opportunities to the public, provided that they are compatible with environmental resources.*

[33] And even if the conversion ADU is not counted as a unit for density purposes, as Government Code Section 66314 and IP Section 13.10.681 might suggest, the proposed new home counts as a unit, and one residential unit is more than allowed by the LCP on its own.

- *Low-intensity passive uses that are compatible with the scenic values and natural setting of the County for open space lands.*

The LCP indicates that only active recreation uses or low-intensity passive uses that are compatible with the scenic values and natural setting of the County for open space lands are appropriate within the O-R land use designation and does not specifically allow for residential uses.

Analysis

According to the County's online Geographical Information Systems (GIS) mapping application,[34] the O-R land use designation extends some 40 feet into the seaward portion of the subject property (which is approximately 100 feet in total length between the landward edge of the sandy beach and Beach Drive), or almost half of the area where the County-approved project would be located. This makes sense inasmuch as the site in question is located atop a historic beach, and the LCP seeks to limit the types of development on such lands to ones that provide for recreational opportunities. Thus, almost half of the County-approved new two-story single-family residence would be sited within the O-R land use designation, and the other half would be sited within the Urban Low Density Residential (R-UL) land use designation. As noted above, the LCP designates active recreation uses and low-intensity passive uses that are compatible with the scenic values and natural setting of the County for open space lands as appropriate for the O-R land use designation, and not residential development. Notwithstanding these LCP requirements, the County's approval of the project concludes that residential use is compatible with the O-R land use designation. However, there is no actual LCP basis for such a conclusion (and it is difficult to see how a private residential structure could be found compatible with the O-R designation even if there were such a 'compatibility' criterion).

Thus, the County's approval of a residence in an O-R area where residences are not allowed thus raises a substantial LCP conformance issue.

5. Variance Approvals

Applicable LCP Provisions

The appeals contend that the County-approved project inappropriately utilized the County's variance approval process, including because the approved project required variance approvals for deviations from maximum height limits, maximum number of stories, maximum lot coverage, and maximum floor area ratio (FAR), among other LCP standards. Notably, the LCP does not allow for a variance to site area requirements that results in the creation of a new building site, and only allows variance approvals subject to specific required findings. The applicable LCP provisions include:

> ***IP Section 13.10.230: Variance approvals.***
>
> *(A) Description. A variance approval is a discretionary authorization of exceptions to the zoning district site and development standards for a property including design standards and guidelines and regulations for special uses. The power to*

[34] Available at https://sccgis.santacruzcountyca.gov/gisweb/.

grant variance approvals does not allow changes in use which are affected only by use approvals pursuant to SCCC § 13.10.220, rezoning of the property pursuant to SCCC § 18.40.055, or amendment to the regulations of this chapter. Variances to site area requirements may be approved only in the case where no new additional building sites would thereby be created (relief in which case may be provided only through rezoning of the property), or in any of the following instances:

(1) To facilitate certificates of compliance;

(2) To facilitate dedications of rights-of-way or other required improvements for public benefit; or

(3) To allow the consideration of the creation of new lots when the size of the lot is within one percent of the zoning requirement and is consistent with the General Plan.

(B) Procedures. All regulations and procedures regarding application, review, approval, appeal, enforcement, etc., for a variance approval shall be in accordance with the provisions of Chapter 18.10 and 19.01 SCCC for a Level V approval and "findings" in subsection (C) of this section, except that site area variances which create new building sites under the circumstances described in subsection (A) of this section shall be processed at Level VII.

(C) Findings. The following findings shall be made prior to granting a variance approval in addition to the findings required for the issuance of a development permit pursuant to Chapter 18.10 SCCC:

(1) That because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification;

(2) That the granting of such variance will be in harmony with the general intent and purpose of zoning objectives and will not be materially detrimental to public health, safety, or welfare or injurious to property or improvements in the vicinity; and

(3) That the granting of such variance shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such is situated.

The LCP only allows variance approvals subject to the findings listed above, related to special circumstances that encumber the property in question, harmony with the general intent and purpose of zoning objectives, and that the granting of such variance would not constitute a grant of special privileges compared to other properties in the vicinity and in the zone which the property in question is located. Thus, variance approvals

must meet a high standard that ensures such approval does not render an unfair result in favor of the applicant, or in disfavor of nearby property owners.

Analysis

In this case, the County-approved project required the approval of several variances that deviate from the RB zoning district standards found in IP Section 13.10.323(C). These deviations include, but are not limited to, the following:

- **Maximum Building Height.** The maximum building height allowed in the RB zoning district is 17 feet from existing or finished grade, whichever is lower. The County-approved project would be 22.5 feet high as measured from finished grade (and approximately 23 feet from existing grade). Although the project would be elevated on concrete piers to elevate above FEMA base flood elevation and thus this contributes somewhat to the deviation from the required maximum height in the RB zoning district, the project also includes 12-foot ceilings and a rooftop deck above the second level, indicating that the applicant in this case did not seek to conform to the 17 foot height requirement for the RB zoning district to the maximum extent feasible.

- **Maximum Number of Stories.** The maximum number of stories allowed in the RB zoning district is one story. The County-approved project would be two stories at the areas located above the garage and storage area.

- **Maximum FAR.** The maximum floor area ratio (FAR) in the RB zoning district is 50%. Importantly, IP Section 13.10.510(E) directs that FAR be calculated by multiplying the maximum FAR by gross site area, excluding any coastal bluffs, beaches, and land seaward of the mean high tide line of Monterey Bay. Thus, because the site is made up of bluff area and areas seaward of the bluff, the gross site area is zero, as discussed previously, and the effective maximum FAR for this project site is 0%. In other words, any new floor area at the site exceeds the maximum FAR, and the County-approved project would include some 2,909 square feet of new floor area in addition to the existing 2,568 square-foot single-family residence for a total of approximately 5,477 square feet of habitable floor area overall (and another 565 square feet in the proposed garage and carport, where the development on the seaward side of the road would thus appear as a roughly 5,600 square-foot structure). Put another way, a primary issue that FAR is meant to address is scale in relation to developable site area, and in this case, where that site area is zero, the large amount of FAR allowed is a particularly significant issue.

- **Maximum Lot Coverage.** The maximum lot coverage for the RB zoning district is 40%. Section 13.10.510(F) directs that lot coverage be calculated by multiplying the maximum lot coverage by gross site area, excluding any coastal bluffs, beaches, and land seaward of the mean high tide line of Monterey Bay." For the same reasons discussed above related to FAR, the effective maximum lot coverage for this project site is 0%, and the County-approved project includes approximately 4,104 square feet of lot coverage, which again, is not an insignificant deviation.

- **Minimum Garage/Carport Setback.** The minimum required setback from a garage or carport in the RB zoning district is 20 feet. The County-approved project includes only a 10-foot garage/carport setback from Beach Drive.

In its approval of these variances, the County found that such approved components of the project are commensurate with "a single-family development on a site of comparable size, in a district not encumbered by beach and bluff constraints." Further, the County found that "[c]onstraints notwithstanding, nearly every lot in the vicinity is developed with single-family dwellings in nearly identical location as the proposed project. The proposed building site is one of two undeveloped areas on the ocean side of Beach Drive, where the second site is only vacant due to storm damage requiring the structure to be demolished," and that "variance approvals are common and often necessary for development in areas where known hazards exist, such as the Coastal High Hazard Areas, floodplains, or where geologic hazards exist."

First, it is important to note that two of the three required findings for approving a variance are: (1) that because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification; and, (2) that the granting of such variance shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such is situated. In other words, the LCP requires a comparative analysis between the property in question and properties in the vicinity that are under the same zoning classification, which in this case is the RB zoning district. However, in its approval of the project, the County instead compared the subject property with "a site of comparable size, in a district not encumbered by beach and bluff constraints." This would appear to be a flawed analysis, as the County is reviewing different neighborhoods and disregarding the significant constraints facing this particular property. The fact is this neighborhood is not a typical inland subdivision and is encumbered by significant coastal resources and coastal resource constraints, and as such the LCP includes specific and appropriate tools governing these unique attributes, as the Coastal Act directs.

A more accurate analysis would compare the subject property with other properties along Beach Drive, and such an analysis may render a different conclusion. For example, no other property along Beach Drive includes a fully detached ADU that is over 2,000 square feet in size with a primary dwelling that is also over 2,000 square feet in size, spanning both sides of Beach Drive. Such an approval may actually represent a grant of special privilege for this reason alone. And, as the County notes, the only other undeveloped area on the seaward side of Beach Drive is only vacant due to storm damage requiring the structure to be demolished, again highlighting the LCP's requirements to avoid placing additional development in this area.[35]

Furthermore, as noted above, the County approved variances from site area requirements (i.e., FAR and lot coverage). The LCP specifically directs that variances to site area requirements may be approved only in the case where no new additional

[35] This storm damaged property is 535 Beach Drive, discussed previously in this report.

building sites would thereby be created. As discussed previously, the County-approved project would result in the creation of a new building site, and it is only by these variance approvals related to site area requirements that a new building site can be accommodated. Thus, it appears that the County-approved project is inconsistent with the LCP requirements for variance approvals, including the required findings to approve variances.

Based on the reasons explained above, the Commission finds that the County's approval raises a substantial issue with respect to LCP requirements for variance approvals, including the findings that must be made in order to grant such variances.

6. Visual Resources

Applicable LCP Provisions

The appeals contend that the County-approved project would be highly visible at beach level along a popular public recreational area, where the LCP requires strict visual resource protection. Relevant LCP provisions include:

> ***LUP Policy BE-4.1.4: Neighborhood Scale, Size, and Context.*** *New residential development may be different from but must take into account the scale and size of the existing surrounding neighborhood, while allowing for infill development, innovative design, and creative expression. Development projects that introduce a change in neighborhood character should provide appropriate building massing so as not to overwhelm or primarily shade adjacent properties, including appropriate setbacks and adequate and maintained landscape buffering to reduce the perception of bulk and height.*
>
> ***LUP Implementation Strategy BE-4.1e:*** *Require consideration of neighborhood character and transitions to surrounding development as a part of the design review process in the [IP]. Give careful attention to building height, massing, setbacks, landscaping, signage, access, fencing, drainage, parking, traffic patterns, visual impacts, and mitigation of potential nuisance factors. (…)*
>
> ***LUP Policy ARC-5.1.1: Designation of Visual Resources.*** *Designate on the General Plan/LCP Resources and Constraints Maps (Appendix F) and define visual resources as areas having regional public importance for their natural beauty or rural agricultural character. Include the following areas when mapping visual resources: vistas from designated scenic roads, Coastal Special Scenic Areas, and unique hydrologic, geologic, and paleontologic features identified in Goal 6. Ocean views, agricultural fields, wooded forests, open meadows, ridgetops, and mountain hillside views are also public scenic assets that should be identified and considered during development review permit processes.*
>
> ***LUP Policy ARC-5.1.2: Development Within Visual Resource Areas.*** *Recognize that designated visual resources of Santa Cruz County possess diverse characteristics that are worthy of protection. Require projects in visual resource areas to be evaluated against the context of their unique environments and regulate structure height, setbacks, materials, and design to protect these resources consistent with the objectives and policies of this section.*

LUP Policy ARC-5.1.3: Protection of Public Vistas and Scenic Assets. *Protect significant public vistas and public scenic assets as identified in Policy ARC-5.1.1, even those that are not mapped and designated as visual resource areas, scenic roads, coastal special scenic areas, or other unique features, by minimizing disruption of landform and aesthetic character caused by grading operations, timber harvests, utility wires and poles, signs, inappropriate landscaping and structure design. Provide necessary landscaping to screen development that is unavoidably sited within these vistas. Proposed landscaping within public vistas should be sited and designed to retain existing public views of vistas and scenic assets especially for coastal designated visual resources.*

LUP Policy ARC-5.1.7: Open Beaches and Blufftops. *Do not permit or allow the placement of new permanent structures that would be visible from a public beach, except where allowed on existing parcels of record, or for shoreline protection, public beach access, or public ocean viewing, and where consistent with SCCC Chapter 13.11. Use the following criteria: (1) Allow infill structures (typically residences and accessory structures on existing lots of record) where compatible with the pattern of existing development. (2) 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.*

IP Section 13.20.130(B-D): Coastal Zone Design Criteria. *(B) 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 façade 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.).*
>
> *(2) Minimum Site Disturbance. Grading, earth moving, and removal of major vegetation shall be minimized. Developers shall be encouraged to maintain all mature trees over six inches in diameter except where circumstances require their removal, such as obstruction of the building site, dead or diseased trees, or nuisance species. Special landscape features (rock outcroppings, prominent natural landforms, tree groupings) shall be retained.*
>
> *(5) All development that is more than one story, where allowed by the site regulations of the basic zone district, that is located in significant public viewsheds (including adjacent to shoreline fronting roads, public accessways, parks, beaches, trails, natural areas, etc.) shall be sited and designed so that upper stories do not cantilever toward, loom over, or otherwise adversely impact such significant public viewsheds and community character.*

(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.

(2) Beaches. The scenic integrity of open beaches shall be maintained:

(a) No new permanent structures on open beaches shall be allowed, except where permitted pursuant to LUP Chapter 5 (for required shoreline armoring), LUP Chapter 7 (for public recreational access improvements), or Chapter 16.10 SCCC (for required shoreline armoring).

(b) All structures that are allowed on open beaches shall be sited and designed to minimize visual intrusion, and to minimize unavoidable intrusion, including through the use of materials and finishes which harmonize with the beach character of the area. Natural materials are preferred.

The LCP requires that public views and visual resources be protected and enhanced, and that new development be visually compatible with the surrounding area, including

with respect to size, bulk, and design. The LCP specifically requires that public views be identified, protected, and restored, and that new development be appropriately sited, designed, and constructed in order to ensure that public views are not adversely impacted; and, prohibits the placement of new permanent structures that would be visible from the beach (except where allowed on existing parcels of record). Finally, the LCP's required CDP findings require that development be visually compatible with the surrounding neighborhood; that structures emphasize a compatible community aesthetic as opposed to maximum-size/bulky designs; that varied architectural elements and landscaping be employed to further reduce impacts, and that development be sited and designed such that it does not block or adversely impact public views or scenic character, including by avoiding structures that loom over significant public viewsheds.

Analysis

In this case, the size and scale of the County-approved project relative to the surrounding area are substantial, at two stories and approximately 2,900 square feet of new residential development sited immediately adjacent to a popular recreational sandy beach area. And, when all elements on the seaward side of Beach Drive are considered, including the garage and carport and the lower story below the habitable space, the proposed new home represents an area that appears as a 5,600 square-foot home. Notably, the approved new residence is sited mere feet from the sandy recreational beach area. In fact, the house would extend to some 40 feet above sea level, and about 25 feet above the typical sandy beach elevation where beach users recreate, imposing a large structure that looms over a significant public viewshed

While the County staff report discusses these visual aspects of the project, it ultimately concludes that, based on the opinion of the project Applicants and their architect, "mitigating features for this elevation are constrained by requirements to comply with FEMA and fire requirements." The County's analysis continues, stating that "staff focused the evaluation on the additional five feet of building height proposed [above the 17-foot height limit for the RB zoning district] and determined that this element of the project would not substantially degrade compromise (*sic*) privacy, light, air, or open space for the adjacent property." However, the LCP does not limit review of a project to only those aspects which exceed base zoning district standards.

In short, the County's approval raises questions as to whether it adequately protects visual resources as the LCP requires, and thus the Commission finds that the County's approval of the project raises a substantial LCP conformance issue with respect to visual resource protections.

7. The "Five Substantial Issue" Factors

When considering a local government's CDP approval for a project that has been appealed to it, the Commission must first determine whether the local government's decision raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over the CDP application for such development and review the CDP application de novo. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP conformance. Section 13115(c) of the Commission's regulations provides that the Commission may consider the following five factors when determining if a local action raises a substantial issue: 1)

the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP; 2) the extent and scope of the development as approved or denied by the local government; 3) the significance of the coastal resources affected by the decision; 4) the precedential value of the local government's decision for future interpretations of its LCP; and 5) whether the appeal raises only local issues, as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may find substantial issues for other reasons. In this case, these five factors, considered together, support a conclusion that the County's approval of a CDP for this project does raise substantial LCP conformance issues.

Here, the first factor heavily weighs in favor of finding substantial issue. The County's decision to approve the CDP for the project relied on dubious factual and legal support, including, as described earlier in this report, by essentially pre-determining to approve the project at the direction of County Planning Commissioners and Supervisors without making the required findings for approval, compelling County staff to find a path for approval via converting the existing residence at the site to an ADU and constructing the new two-story single-family residence. Specifically, valid questions are raised regarding the County's interpretations of the LCP's coastal hazards, variance approval, density, O-R land use designation, and public view provisions, as discussed previously.

In particular, the LCP prohibits the creation of new building sites in coastal hazard areas, and, without explanation, the County concluded that the project would not result in the creation of a new building site even though the opposite is plainly the case here. As described previously, it appears clear that the project would result in the creation of a new building site per the plain reading of the LCP's definition of this term, counter to the County's conclusion. And even if the building site was not created, which is inaccurate, the County did not adequately evaluate the other component of the coastal hazard provisions, including with respect to allowing a project to be sited for 100 years of stability based on a shoreline protection structure, which is expressly not allowed under the LCP.

And with respect to the County's interpretation of LCP variance approvals, the County did not accurately apply the strict standards required by LCP variance provisions, including by relying on comparing the subject property with properties not encumbered by similar constraints; the LCP variance provisions require that the property in question is compared to similar parcels in the same zoning district, and that such variance approval does not render an unfair result in favor of the property owner, or at the disfavor of adjacent property owners. The County did not apply these required standards to the approved project, and it appears that the result is unfairly in favor of the Applicants in this case. In terms of the degree of special privilege provided, there is not a single property in the RB zoning district with more than one residential unit, and allowing two here would mean that this applicant is the only applicant allowed that privilege, also inconsistent with LCP variance procedures.

For these reasons, the County's decision raises substantial questions related to the factual and legal support for the County's approval of the project.

Regarding the second factor, the extent and scope of the development as approved by the County supports a finding of substantial issue because the project would result in new residential development in an area that is subject to significant coastal hazard risk, including landsliding, coastal inundation, wave attack, and sea level rise. A new two-story, 2,909 square-foot single-family residence with a fully detached 2,568 square-foot ADU would constitute a substantial concentration of new development in an area that the LCP generally directs against. The fact that there are no other parcels on Beach Drive with two residential units of this scale also exemplifies that the extent and scope of the development is exceptional, including as compared to surrounding development and surrounding parcels. And, in this case, the approved project would require the creation of a new building site in a coastal hazard area, which the LCP prohibits for precisely these hazards reasons. Taken together, the extent and scope of development here supports a finding of substantial issue.

Regarding the third factor, the approved project affects core coastal resources in terms of coastal hazards, including development along beach areas with significant visual resources, all of which go largely unaddressed by the County's approval. Thus, the third factor also supports a finding of substantial issue.

Regarding the fourth factor, because the project raises such important coastal resource protection concerns, including allowing the LCP to be interpreted to allow for substantial new residential development in a coastal hazard area when a fairly plain reading of the LCP would suggest that that is not allowed, a finding of no substantial issue could create an adverse precedent for future interpretation of the LCP.[36] Such a precedent could potentially lead to significant new development in an area with well-known hazards. Future applicants may look to this example and conclude that they need not meet the LCP's requirements in order to pursue and obtain approval from the County for new residential development in one of the County's most hazardous locations, or alternatively, the County may seek to approve such development that does not meet critical LCP tests. Therefore, the fourth factor also supports a finding of substantial issue.

Finally, with respect to the fifth factor, the project raises issues of regional and statewide significance because concerns regarding the impacts of concentrating new development in highly hazardous locations are much broader than just this site, or even Santa Cruz County alone. In fact, the question of how coastal communities throughout the coastal zone adapt to sea level rise, accelerating beach erosion, and coastal hazards is one of the most important coastal zone issues facing the State of California. The fifth factor also supports a finding of substantial issue.

For the reasons stated herein, the Commission finds that Appeal number A-3-SCO-26-0022 raises substantial LCP conformance issues in terms of coastal hazards, allowable development density on beach-level lots, allowable development in the Parks, Recreation, and Open Space (O-R) land use designation, variance approvals, and

[36] Although the Commission notes that any one case is decided on its specific facts and merits, the fact remains that the County and/or other applicants would be likely to point to a case like this as precedent for their own applications, meaning that concern is warranted on this point.

visual resource protections. Therefore, the Commission finds that **a substantial issue** exists with respect to the County-approved project's conformance with the certified Santa Cruz County LCP and takes jurisdiction over the CDP application for the proposed project.

3. APPENDICES

A. Substantive File Documents[37]

- File for Coastal Development Permit Appeal Number A-3-SCO-26-0022

B. Staff Contact with Agencies and Groups

- Santa Cruz County Community Development and Infrastructure Department
- California Department of Housing and Community Development

[37] These documents are available for review in the Commission's Central Coast District office.