**COASTAL PROPERTY OWNERS ASSOCIATION OF SANTA CRUZ COUNTY**

September 23, 2019

To: Kathy Malloy, Planning Department Director

Cc: Board of Supervisors

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Regarding Proposed Local Coastal Program and County Code Amendments

Board of Supervisors Agenda Consent Item #50 to delay vote until 10/8/19
Tuesday September 24, 2019 at 9:00AM
Board of Supervisors Chamber
County Government Center
701 Ocean Street, Room 525
Santa Cruz, CA 95060

Dear Kathy:

Thank you for meeting with the Coastal Property Owners Association of Santa Cruz County. We want to support the County’s effort to develop a Local Coastal Plan as long as it is practical and reasonable. We continue to have a number of concerns about the County Planning Commission’s proposed Local Coastal Program. Our concerns are:

* **Coastal Property Owners have the right to protect their property and structures from further damage due to coastal erosion** with appropriate shoreline protection (armoring devices such as sea walls, revetment rocks, etc) to prevent further erosion, protect public safety, prevent injuries, as long as the shoreline protection does not restrict access to public beaches. In many cases these shoreline protection devices actually enhance public access, and protect public safety, as well as the County’s infrastructure.
* Those critical areas of the coastline which are in immediate danger of further coastal bluff erosion, within the next 10 years, such as Opal Cliffs and Depot Hill near Capitola, **shall be granted permits to install appropriate armoring devices before it becomes an emergency situation**. We will re-submit a plan for a uniform seawall to be constructed along Opal Cliffs.
* We not only want to protect coastal properties, but prevent dangerous rock slides which could injure or kill people on the beaches below, such as occurred in Encinitas in Southern California.
* The term and condition for pre-existing shoreline protection devices **shall NOT be altered.** Those permits issued in perpetuity, prior to or following the coastal act, or more recently issued by the County and Coastal Commission, shall NOT be changed.
* The concept of an “all cause and unlimited” release of liability, indemnification of the County and Coastal Commission, and “hold harmless” has recently been ruled unlawful in San Diego. The Coastal Property Owner’s of Santa Cruz County are not willing to sign an “all cause and unlimited” release of liability, indemnification, and hold harmless document to be recorded on our property deeds. Instead, the liability release should be limited to potential harm or danger to the public or safety hazards **due to natural erosion of cliffs, bluffs, sea level rise, storm surges or other natural events (resulting from the new development),** similar to the language on new County Permit applications.
* Only **new permits** for new coastal development or re-development (more than 50% of major structural components), and requests for new shoreline protection (armoring devices) shall be required to complete a coastal hazards assessment, file a release of liability, indemnification, and hold harmless document to be recorded on the property deeds, or may be subject to sand mitigation fees.
* “Managed Retreat” is not a viable option for most coastal properties in Santa Cruz County.
* The proposed “Sand Mitigation fees” are unreasonable, not based on proven scientific principles, and amount to excessive tax without representation. Therefore, any Sand Mitigation fees must be based on hard science and estimates of the actual potential sand loss which will occur at the site of the proposed armoring devices. The quality of the dirt from erosion of coastal cliffs will not generate quality sand to replenish the beaches. 90% of the sand supply along the Santa Cruz Coastline comes from the rivers, streams and lagoons which dump into the ocean, according to Professor Gary Griggs. There is a natural and seasonal migration of the sand, which affects the sand levels at certain times of the year. These factors must be taken into consideration when determining any Sand Mitigation fees. Property owners may offer improved public access and protection from beach erosion in lieu of Sand Mitigation fees.
* Coastal Hazards assessments shall only be required for new or substantially modified structures and new armoring devices.
* Maintenance and Repair of existing permitted armoring shall not be subject to the required Geologic/Coastal Hazard, Acceptance of Risk, and Liability Release.
* If no substantial structural improvements, redevelopment, or reconstruction are required, permits for existing armoring devices shall be renewed according to provisions in the original permit.
* Recognize the negative impact of the Santa Cruz Harbor and jetties on the downstream beach sand supply and seasonal sand migration.
* Consider the installation of point restorations (groins - concrete/shotcrete extensions of rock outcrops) to help trap and retain sand at strategic locations, such as was done in Capitola.

The following Essential changes and/or clarifications to the County’s proposed LCP (Exhibit X of the March 13, 2019 staff report) are requested:

Page 155, add to 7th bullet under County of Santa Cruz Guiding Principles

1. Establish triggers for when property owners would be required to address imminent danger from coastal hazards (within 10 years), expedite permit requests and avoid emergency permits. For structures less than 25 feet of edge of coastal bluffs or cliffs shall be granted an expedited permit for protective armoring per the terms of this LCP, to avoid emergency permits and to protect public safety. Those critical areas of the coastline which require protection from further coastal bluff erosion, in order to protect public safety, include Opal Cliffs and Depot Hill near Capitola.
2. Page 156, add to 14th bullet under County of Santa Cruz Guiding Principles

Recognize that the County will periodically update the Safety Element and applicable regulations in order to reflect evolving conditions and best available science. The planning horizon and timeframe of this current Safety Element is to the year 2040 when it is expected these policies will be updated. Applications submitted after the update is adopted would be subject to updated policies. The term and conditions of pre-existing shoreline protection (armoring devices) shall not be altered, unless the armoring device becomes unsafe, unstable, or requires more than 50% of the structure to be repaired or replaced.

1. Page 159, 6.4.5, Geologic Hazards Assessment and Technical Reports in Coastal Hazard Areas, add

Reports must be accepted by the County in order to use report findings as the basis for design of proposed structures or improvements. Coastal Hazards assessments shall only be required for new or substantially modified structures and new armoring devices.

1. Page 160, 6.4.9 Required Recordation on Deed of Notice of Geologic/Coastal Hazard, acceptance of Risk, Liability Release, and Indemnification as a Condition of Coastal Development Permit Approval. Change to filing with the Permit Application, and restricted liability release.

As a condition of approval of Coastal Development Permits for development activities (SCCC16.10) on sites subject to coastal hazards, require the applicant to record on title/deed to the property, prior to issuance of a building permit or grading permit, a Notice of Geologic/Coastal Hazard, Acceptance of Risk, and Liability Release, and Indemnification. The Notice shall be in a form approved by the County of Santa Cruz, and shall include, but not be limited to, the following acknowledgements and agreements, on behalf of the applicant and all successors and assigns, as applicable to the specific project:

As a condition for any new permits for coastal development or armoring on sites subject to coastal hazards, that the applicant file a Notice of Geologic/Coastal Hazard, Acceptance of Risk, Liability Release and Indemnification to the County and Coastal Commission for potential harm or danger to the public or safety hazards **due to natural erosion of cliffs, bluffs, sea level rise, storm surges or other natural events (resulting from the new development).**

1. Page 162, 6.4.13, Modification, Reconstruction, or Replacement of Damaged Structures on Coastal Bluffs, modify language to include other natural disasters

For structures involuntarily damaged by other than coastal hazards (fire, earthquake or other natural disasters ~~for example~~), where the loss involves 50 percent or more of the Major Structural Components, allow repair “in kind”, but encourage relocation to increase the setback if feasible.

Casualty structural loss (up to **75%** of combined structural components) due to fire, earthquake or other natural disaster not involving coastal erosion or bluff stability, shall be allowed to reconstruct in kind and will not be subject to any of the new requirements.

1. Page 166, 6.4.25, Structural Shoreline and Coastal Bluff Armoring, add language
2. Limit shoreline and coastal bluff armoring to serve coastal dependent uses or to protect existing structures or public beaches from significant threats. The armoring shall be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Armoring may also be considered for vacant lots where both adjacent parcels are already similarly protected, or vacant lots which through lack of protection threaten adjacent or nearby developed lots; or those which protect public roads and infrastructure, and coastal recreation areas.

The term and conditions of pre-existing shoreline protection (armoring devices) shall not be altered, unless the armoring device becomes unsafe, unstable, or requires more than 50% of the structure to be repaired or replaced. Maintenance and Repair of existing permitted armoring shall not be subject to the required Geologic/Coastal Hazard, Acceptance of Risk, and Liability Release.

1. Page 167, Conditions of Approval, 1) Sand Mitigation, add

(1) Sand Mitigation - to mitigate for loss of beach quality sand which would otherwise have been deposited on the beach the County may collect a fee proportional to the impact of the project on the deposit of beach quality sand which would have otherwise occurred to implement projects which mitigate for loss of beach quality sand due to shoreline or coastal bluff armoring. The methodology used to determine the appropriate mitigation fee will be as approved by the California Coastal Commission and which may be administratively amended from time to time by the Commission.

The mitigation fee shall be deposited in an interest-bearing account designated by the Planning Director or County Parks Director. Sand Mitigation fees must be based on hard science and estimates of the actual potential sand loss which will occur at the site of the proposed armoring devices, as determined by an independent geologist. When determining the potential lost sand due to new or revised armoring, the natural seasonal migration of sand as a result of the Harbor Jetty construction, storm surges, and other oceanic events shall be taken into consideration. Coastal property owners shall not be held responsible for the natural erosion and migration of sand levels.

The following additional changes and/or clarifications to the County’s proposed LCP (Exhibit X of the March 13, 2019 staff report) are requested:

1. Page 153

**Objective**

The objective of the coastal bluffs and beaches policies is to recognize and minimize risks to life, property, and public infrastructure in coastal hazard areas; and to minimize adverse impacts on coastal resources from development in coastal hazard areas, while protecting the constitutional rights of existing coastal property owners.

1. Page 156, clarify 17th bullet under County of Santa Cruz Guiding Principles, sub-bullet 3

Ensure Agreement to Monitoring, Maintenance and Repair Programs are implemented for existing shoreline and coastal bluff armoring, as required by the terms of the initial permits.

1. Page 159, 6.4.9, Prohibit New Lots or Parcels in Coastal Hazard Areas, add

Do not allow the creation of new lots or parcels (excludes lot splits of parcels with existing structures) in areas subject to coastal hazards, or within geologic setback areas necessary to ensure a building site for an expected 75 or 100-year lifetime, or where development would require the construction of public facilities or utility transmission lines within coastal hazard areas.

1. Page 165, Project Review, add

(d) New or revised shoreline or coastal bluff armoring shall be designed as close as possible to the coastal bluff or structure requiring protection and must be designed to minimize adverse impacts. Permits for new armoring shall not be denied for parcels with modified structures. Design considerations include but are not limited to the following:

1. Page 169, (l) Armoring Duration, replace, and add

(l) Armoring Duration. The shoreline or coastal bluff armoring shall only be authorized until the time when the existing structure that is protected by such a device 1) is no longer present; or 2) no longer requires armoring. Permittees shall be required to submit a coastal permit application to remove the authorized shoreline or coastal bluff armoring within ~~six~~ twelve months of a determination that the armoring is no longer authorized to protect the structure it was designed to protect because the structure is no longer present or no longer requires armoring.

If no substantial structural improvements, redevelopment, or reconstruction are required, permits for existing armoring devices shall be renewed according to provisions in the original permit. This excludes replacement or renovation due to fire, earthquake or other natural disasters.

If the County of Santa Cruz agrees to make changes consistent with the above, the Coastal Property Owner’s Association of Santa Cruz County will support the adaptation of the revised Local Coastal Plan.

Sincerely,

Steve Forer
President,
Coastal Property Owners Association of Santa Cruz County
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