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

December 8, 2019

To: Board of Supervisors

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Regarding Proposed Local Coastal Program and County Code Amendments

Board of Supervisors Agenda Item #16, 12/10/19

County Government Center
701 Ocean Street, Room 525
Santa Cruz, CA 95060

Dear Supervisors:

We have received the Planning Department’s Staff Report and recommended Amendments to the County’s Proposed Local Coastal Plan Public Safety Element. While it appears that the Planning Department has addressed many of our concerns, there have been substantial changes from the prior draft approved on November 13, 2019 by the Planning Commissioners which have a significant adverse impact on coastal property owners. These changes appear to be unauthorized as they have not had the opportunity to be reviewed and approved by the Planning Commissioners with input from the Public (please refer to additional material to item 16, red lined version of changes from 11/13/19 – 12/10/19). Furthermore, there are substantial discrepancies between the LCP and Code Amendments and many issues still require further clarification. In addition, as we just received the documents on December 4 which are scheduled for a vote by the Board of Supervisors on December 10, there is insufficient time to complete a thorough review of the 6.4 Public Safety Element Amendments and Chapter 16.10 Ordinance Code Amendments Regarding Geologic Hazards and to understand how these changes affect the rights of property owners. Given the substantial changes from the prior approved draft, the significant adverse impact on coastal property owners and the inadequate time for review, we can **no longer support the proposed LCP.**

The Planning Commissioners approved a revised version of the LCP on November 13, 2019 after making additional changes. At that time we raised four significant concerns that we wanted to see properly addressed in the final LCP.

1. 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. Property owners will be allowed to maintain their armoring devices according to the terms of their initial permits.

**Partially Addressed.** The language appears to be properly added in the Safety Elements LCP but it is missing from the Ordinance Code Amendments.

1. 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 (San Diego; Briggs vs California Coastal Commission, 2019). Instead, the liability release to be recorded on the Property Deeds 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), for the useful life of the structures* “ similar to the language on new County Permit applications.

**Not Adequately Addressed.** While the language has been altered to better define the limits of the liability release in section 6.4.9, it does not specify the term, which we believe is unlawful. Furthermore, this language must be also be included in Chapter 16.10 Ordinance Code Amendments Regarding Geologic Hazards .

1. A) 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 formula used to calculate Sand Mitigation fees, Recreation Use Fees, and Encroachment fees must be specified in the LCP. These fees will only apply to new construction, re-development or new shoreline protection permits.Property owners may offer improved public access and protection from beach erosion in lieu of these fees.

**Partial****ly Addressed.** While the formula for calculating Sand Mitigation, Recreation Use and Encroachment fees have been stated in the LCP, they have not been fully justified.

B) Only **new permits** for new coastal development or re-development (more than **~~65%~~ 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.

**Addressed and Rationale explained.**

1. The designated “Shoreline Protection Exception Area” for Opal Cliffs will allow for the development of a “uniform seawall” with increased public access and walkway from 41st Ave. to Capitola City border. However, those few existing seawalls should remain in place for the stability of the bluffs, and interface with the “uniform seawall” when it is built.

**Adequately Addressed.**

**Additional Concerns Regarding the 12/10/19 Draft of the LCP**

As previously stated, while we have not had adequate time to properly review the Planning Department’s Staff Report and recommended Amendments to the County’s Proposed Local Coastal Plan Public Safety Element, we have noted many changes from the previously approved draft that dramatically reduce the rights of coastal property owners. While not intended to be comprehensive, the following includes examples of apparently unauthorized changes in the LCP that have a substantial negative impact on coastal property owners.

(A) In the LCP and also in Exhibit B of the Public Safety Element Amendments on Page 6-25 it states …”*allow property owners in certain defined areas to pursue new or redevelopment/replacement of existing homes* ***only one time*** *unless located within a designated Shoreline Protected Exception Area or an adopted Shoreline Management Plan provides otherwise,…in the future after adoption of the 2020 Public Safety Element*.”

The Previously approved draft stated *“…allow one redevelopment/replacement within the 20 year planning period, but if repetitive loss occurs due to coastal processes and storm impacts, then do not allow a second redevelopment/replacement.”*

Prior to this most recent change, Property Owners were assured of one redevelopment/replacement within the 20 year planning period and have a reasonable expectation of redevelopment/replacement after the 20 year planning period as well unless their home is subject to repetitive loss.

This new change – allowing new or redevelopment/replacement of existing homes ***only one time*** forever regardless of whether the property is threatened by any hazard or repetitive loss due to coastal processes or storm impacts - creates a new and extraordinary limitation on the rights of coastal property owners, and effectively prevents further coastal development/redevelopment.

(B) The County has also changed the definition of Repetitive Loss which would allow the County greater discretion to deny redevelopment/replacement of a property owners property. The previously approved draft stated: *“Repetitive Loss property is any habitable building for which two or more coastal hazard events within in any twenty year rolling period caused [substantial] damage,…”* The new change drops *“within in any twenty year rolling period”*. Therefore two or more coastal hazard events that caused substantial damage which occur more than 20 years apart – (i.e. thirty, forty, fifty years apart or more) - may allow the County to deny redevelopment/replacement of a property owners home. Furthermore, it is unclear as to whether a property owner in order to repair their property that suffers repetitive loss must use their ***only one time*** redevelopment/replacement to do the repair.

(C) The next two changes are intended to change the formulas for determining when a redevelopment/replacement has occurred thereby shortening the timeframe when a property owner will use up their ***only one time*** forever opportunity.

(i) Depending on whether the property is located on a coastal bluff or beach, *“Redevelopment/replacement means modification/reconstruction of 50% (previously this was 65%) or more of the major structural components (MSC) …”*

(ii) Furthermore, the County is proposing a major change in how the calculation is determined. Currently the County of Santa Cruz considers only the most recent 5-year timeframe for the calculation of % change to major structural components that defines the threshold for “reconstruction”. The proposed change would start the calculations from the date that the 2020 Safety Element is adopted and appears to be cumulative with an infinite timeframe.

This will substantially limit or eliminate the ability of long term and subsequent property owners to make any renovations or substantial improvements to their homes.

The County itself acknowledges ***“This is a significant shift from the current 5-year calculation that rolls forward and essentially gets to zero each 5 years***.”

The adoption of these provisions in the LCP will have a substantial detrimental impact on the rights of coastal property owners. After the ***only one time*** to build a new home or do a major renovation is utilized, coastal homes will eventually become depreciating assets, functionally obsolete, of limited use and diminished value, unless they are part of a currently undefined shoreline protection exception area.

Limiting property owners to pursuing new or redevelopment/replacement of existing homes ***only one time*** foreverregardless of whether their home is threatened by any hazard currently or in the future, has never been adopted anywhere in the United States and may very well constitute a **“taking of private property”**.

There are many other changes, in addition to those described above, that adversely impact the rights of coastal property owners, and there are many areas that leave open important questions and require further clarification. Some items requiring clarification are detailed on Exhibit A (CPOA concerns) included in this letter.

Given the magnitude of the changes in the latest draft of the LCP, the inadequate timeframe provided for review, the adverse consequences to coastal property owners and the increasing possibility that Santa Cruz County will be open to undesirable litigation, we ask that the Board of Supervisors postpone adoption of this proposed LCP such that a proper review can be conducted and a better resolution developed among the interested parties.

Sincerely,

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

Exhibit A

Areas needing further clarification

1. Will the existing revetment rocks used as shoreline protection on East Cliff Dr. between the Harbor (7th Av) and Soquel Point be required to be replaced with a vertical modern seawall before a Shoreline Protection Plan is established in 2035?
2. What if it is not economically or environmentally feasible to remove all of these revetment rocks and replace them with a vertical modern seawall?
3. Does the one-time replacement of structures > 50% of the major structural components apply to properties under the Shoreline Management Plan or designated Shoreline Protection Exception Area?
4. Is there a cumulation ceiling for renovations which fall below the 50% threshold?
5. Will all existing permitted shoreline protection and coastal bluff armoring eventually be required to file a Monitoring Maintenance & Repair Plan, or will they be allowed to maintain and repair their protective structures according to the terms of their original permits?
6. What about current structures that are less than the required 25 foot set-back from coastal bluffs (15 – 25 feet)? Will they be allowed to be granted permits for new shoreline protection or armoring using more modern techniques?
7. If a uniform modern vertical seawall is permitted along Opal Cliffs from 41st Ave to the Capitola City Border, where will the horizontal public access way be accommodated (eg. within 4 feet off the base)? Will the seawall be extended to the top of the bluffs?
8. Can both a Recreational Use Fee and Encroachment fee be applied to the same property or protective structure?
9. Incentivized Management Retreat allows property owners to pursue only one new or major redevelopment structure of >50% of the structural components in exchange for assume risk, liability release, indemnification, hold harmless, and geological hazard assessment with potential mitigation fees. Does this apply to the useful life of the property, or one structure every 20 years?
10. Will new Coastal Development Permits be renewed every 20 years, or can you building code and hazard restrictions be applied?