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

September 12, 2020

To: Board of Supervisors

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Regarding Proposed Local Coastal Program and County Code Amendments

Board of Supervisors Agenda Item #7, (9507), 9/15/20

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

Dear Supervisors:

CPOA urges the Board of Supervisors to **delay the vote** on proposed amendments to Santa Cruz County’s Local Coastal Program relating to coastal bluffs and beaches (land use plan section 6.4) and geologic hazards (implementation plan chapter 16.10). Although the Planning Department responded to John Leopold’s motion on 3/10/20, there are still many flaws and inconsistencies in the documents which could lead to misunderstandings and potential law suites against the County. **These documents are not ready to be submitted to the California coastal Commission for review and certification.** We hired a land use attorney, Derric Oiver, with Fenton & Keller, to advise and assist the CPOA in this LCP update process. Mr. Oliver has submitted two letters to Kathy Molloy, dated 2/7/20, 3/6/20 and a letter to the Board of Supervisors on 4/17/20 with his detailed analysis and requested changes. However, many of these requested changes and clarfications have not been made in the latest documents. We have worked with the County in good faith, and have provided thoughtful and reasonable input on changes which are needed to clarify the documents. We asked our attorney, Derric Oliver, for an additional legal review of the red-lined changes since 3/10/20 to Local Coastal Program relating to coastal bluffs and beaches (land use plan section 6.4) and geologic hazards (implementation plan chapter 16.10), which were provided with the Board of Supervisors agenda packet for the 9/15/20 meeting (see attached). The attached documents annotaded by Derric Oliver provides detailed comments regarding the internal inconsistencies, ambiguities, and apparent/potential limitations which exceed those required by the Coastal Act.

**CPOA’s major concerns are as follows:**

* Refer to Derric Oliver’s letters to Kathy Molloy, dated 2/7/20, 3/6/20, and letter to Board of Supervisors on 4/17/20, for prior detailed analysis and specific changes requested.
* Refer to the attached proposed red-lined changes since 3/10/20 to the documents annotaded by Derric Oliver providing detailed comments regarding the internal inconsistencies, ambiguities, and apparent/potential limitations which exceed those required by the Coastal Act.
* For coastal properties and structures damaged due to coastal erosion, storm surge or wave run-up, the proposed changes exceed the requirements of the Coastal Act, and there are apparent internal inconsistencies. For example, the proposed LUP policy 6.4.11 indicates the potential denial or additional limitations on the ability to replace or repair structures “damaged by coastal processes” , whereas conversely in proposed LUP policies 6.4.13, 6.4.17, and 6.4.36, it will conditionally allow such replacement/repair where damage exceeds 50%. This may prevent property owners from rebuilding structures damaged in the same location. **One replacement or repaired structures due to damage by coastal process shall be approved if they meet LUP polices 6.4.11 & 6.4.12.**
* The “one time limitation” to major redevelopment/replacement > 50% of the major structural components” language has been modified according to John Leopolds approved Board Motion on 3/10/20, but the language is still vague and potentially mis-leading. According to the proposed LUP section 6.4.11, … allow one project that qualifies as new, a substantial remodel or “redevelopment/replacement” (defined as a modification/reconstruction of 50% or more of the major structural components of the structure or an addition of more than 50% of the habitual area of the structure as defined in section 16.10) prior to 2040, or prior to any amendment to this policy provision, which ever is later. After the allowed one time new or major project, subsequent major development may be considered subject to and in accordance to Policy 6.4.12. A set back of the proposed structure greater than 25 feet (applicable 75 year or 100 year geologic coastal set back) may be required based on conditions of the ajoining site, recommendations of required geologic, soil engineering, and or other technical reports in order to provide for stable building site for the foreseeable future.
	+ It is unclear if the first major re-development/replacement structure is subject to the required set back or geological assessment, if it is not within the designated Shoreline Protection Exception Area (SPEA), or area governed by a Shoreline Management Plan (SMP).
	+ Will the set back calculation take into consideration existing shoreline protection devices (sea wall, revetment rocks) outside of the SPEA and SMP areas?
	+ It is unclear under what circumstances or conditions, the County may grant a waiver to the set back requirements. Does this waiver only apply to the first major project?
	+ For properties inside the SPEA or area governed by a SMP, what requirements apply to major redevelopment/replacement structures?

**The first major redevelopment/replacement project shall be approved, will be allowed to take into consideration any existing shoreline protection, and will not be required to have a geological hazard assessment.**

* Within the SPEA extending from Soquel Point (APN 028-304-72) to the Capitola City border, allow for the construction of a vertical, uniform sea wall, which is esthetic, blends in with coastline, and provides for additional horizontal public access.
	+ For property owners with existing sea walls, will they be allowed to repair and redesign their protective structures so that they can be interfaced and connected to the uniform sea wall?
	+ Will existing sea walls be taken into consideration when calculating the required set back?
	+ There are currently 16 properties with structures along Opal Cliffs that are less than the required 25 foot set back and are at risk for further coastal bluff erosion. Will they be allowed to construct a vertical sea wall to protect their parcel from further bluff erosion in accordance with the plan for a uniform sea wall, before a GHAD is formed and the plans are finalized for the uniform sea wall? One such parcel (APN 033-171-24) which is located adjacent to the public access stairwell at the end of East Cliff and 41st Ave, has continued coastal bluff erosion and a set back of less than 25 feet, putting the public at risk from falling rocks and debris due to further bluff erosion. The property owners should be allowed to immediately begin construction of a vertical sea wall to tie into the public stairs and walkway to prevent further erosion. According to our attorney, Derric Oliver, there is nothing in the LCP or Code Amendments clarifies that formation of a GHAD is required before granting permits for shoreline armoring within the SPEA.

**Property owners with currently less than a 25 foot bluff set back shall be given permission to proceed with a vertical sea wall or repair existing sea walls consistent with the planned uniform sea wall within the SPEA.**

* We have consistently argued that **the term and conditions for pre-existing permits for shoreline armoring, shall not be altered**. The requirements for a geologic hazarad assessment and new monitoring maintenance & repair plans should not be applied to pre-existing permits, prior to the adoption of the proposed LCP and Code Amendments. However in section 6.4.25 k) states that “No approval shall be given for a coastal development permit involving shoreline or coastal bluff armoring that does not include a requirement for submittal and County acceptance of a Monitoring, Maintenance and Repair Program prior to finalization of the building/grading permit for the structure.” Period reports completed by a professional engineer or geologist familiar and experienced with coastal protection structures and process, shall be submitted to the County at least every five years.
	+ The County has failed to insert clarifying language that these requirements **only apply to new or proposed** shoreline protection or coastal bluff armoring structures.
	+ All pre-existing and permitted shoreline protection and coastal bluff armoring structures shall be required to maintain and repair their coastal armoring according to the terms of their original CDP.
* **There should be no new limitations on shoreline protection imposed by the County that are more restrictive than what is permitted by the Coastal Act.** The County has argued that the definition of “new” major redevelopment/replacement projects apply to structures built after LCP is approved in 2020, not retro to the Coastal Act 1/1/1977. **We strongly support this position.**
* Will both the FEMA standards and the LCP requirements be applied to properties in FEMA Flood Zone Areas? First all relevant FEMA standards will be applied, then any additional requirements from the LCP which are not already covered by the FEMA standards.
* What options are available for improvement/replacement structures on the beaches in FEMA Flood Zone areas? According to our recent conference call with Kathy Molloy and David Carlson on 8/19/20, a major redevelopment/replacement structure may be elevated up to 10 feet above its existing location to accommodate coastal hazards, storm surge or wave run-up. No new shoreline armorment will be allowed on the beaches. However, **existing armorment within FEMA Flood Zone Areas will be allowed to be maintained and repaired subject to the conditions of the current Coastal Development Permit.** If more than 50% of the armoring device, or repairs require more than 20% new material, the property owner would have to apply for a new CDP. However, this is not clearly explained in the proposed LCP and Code Amendments.

**Therefore, we are urging you to delay your vote on the proposed 6.4 Public Safety Element Amendments and Chapter 16.10 Ordinance Code Amendments Regarding Geologic Hazards until these issues are adequately addressed.**

Given the magnitude of the changes in the latest draft of the LCP, inconsistencies, areas needing further clarification, the adverse consequences to coastal property owners and the increasing possibility that Santa Cruz County will be open to undesirable litigation, **we can not support the changes** in the final Safety Code Amendments Section 6.4 – Local Coastal Program for Beach and Coastal Bluffs.

The County should take the time to correct and clarify the above mention issues, and those outlined in Derric Oliver’s annotated redlined version of the proposed changes to the LCP and Code Amendments since 3/10/20, which provide detailed comments regarding the internal inconsistencies, ambiguities, and apparent/potential limitations which exceed those required by the Coastal Act, before these documents are submitted to the California Coastal Commission for review and certification. We believe, once these documents have been revised and submitted to the CCC, there will be another opportunity for public review and comment before they are finalized by the County.

If the Board of Supervisors chooses **not** **to** **delay the vote** on proposed amendments to Santa Cruz County’s Local Coastal Program relating to coastal bluffs and beaches (land use plan section 6.4) and geologic hazards (implementation plan chapter 16.10, we ask for the following amendments be made:

1. **One replacement or repaired structure due to damage by coastal process shall be approved if they meet LUP polices 6.4.11 & 6.4.12.**
2. **The first major redevelopment/replacement project shall be approved, will be allowed to take into consideration any existing shoreline protection, and will not be required to have a geological hazard assessment.**
3. **Property owners with currently less than a 25 foot bluff set back shall be given permission to proceed with a vertical sea wall or repair existing sea walls consistent with the planned uniform sea wall within the SPEA.**
4. **The term and conditions for pre-existing permits for shoreline armoring, shall not be altered**. The requirements for a geologic hazarad assessment and new monitoring maintenance & repair plans should not be applied to pre-existing permits, prior to the adoption of the proposed LCP and Code Amendments.
5. **There shall be no new limitations on shoreline protection imposed by the County that are more restrictive than what is permitted under the Coastal Act.**
6. **Existing armorment within FEMA Flood Zone Areas will be allowed to be maintained and repaired subject to the conditions of the current Coastal Development Permit.**

Sincerely,

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