



October 10, 2022

From: Smart Coast California

To: California Coastal Commission

Submission via Email to [CentralCoast@coastal.ca.gov](mailto:CentralCoast@coastal.ca.gov) and [Donne.Brownsey@coastal.ca.gov](mailto:Donne.Brownsey@coastal.ca.gov)

Re: Public Comment on October 2022 Agenda Item Friday 10e - Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update).

Honorable Chair Brownsey and members of the California Coastal Commission,

Smart Coast California (SCCa) is grateful for the opportunity to submit our comments to the Coastal Commission regarding Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update). SCCa is a 501(c)6 organization established in 2019 to promote and advocate for smart land use policies affecting California's 1,271 miles of coastline. Smart Coast California is dedicated to community sustainability, property rights and the environment. Our comments are informed by our detailed review of the following documents, including, but not limited to:

Santa Cruz County Local Coastal Plan Public Safety Element and Attachments, adopted by the Board of Supervisors, September 15, 2020.

Formal comment Letter from CCC staff Central Coast District Supervisor Kevin Kahn, September 9, 2020

Santa Cruz County GPA/LCPA Staff Report, March 10, 2020,

1. CCC Staff Report and exhibits for approval of Pleasure Point/ East Cliff Drive Parkway CDP 3-07-019 December 13, 2007
2. California Coastal Commission Sea Level Rise Policy Guidance, Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits

Smart Coast California acknowledges the task before you is formidable. You will be asked if you can find the Santa Cruz County LCPA to be consistent with the Coastal Act, and Smart Coast California urges you to make those findings and certify this document.

#### **A Local Coastal Program**

The Coastal Act creates a unique partnership between the state and local governments. Section 30500 (c) of the Coastal Act states,

"The precise content of each local coastal program shall be determined by the local government, consistent with Section 30501, in full consultation with the commission and with full public participation."

Local jurisdictions need to be able to plan for their specific circumstances. Section 30004 (a) of the Coastal Act states:

"To achieve maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily on **local government** and local land use planning procedures and enforcement." (emphasis added)

Santa Cruz County began background studies in 2011, collaborated with key stakeholders, held multiple public hearings, and developed several drafts of the LCPA, completing roughly \$500,000 of focused work to develop a community-driven plan that is consistent with Coastal Act policies.

### **“Existing”**

In our review of the Coastal Commission Staff Report for Item F10e, the most consistent basis for the case the staff makes against certifying the Santa Cruz County LCPA is based on their interpretation of the definition of “existing”.

According to Section 30235 of the Coastal Act (Coastal Act codified in Public Resources Code Sections 30000 through 30900), property owners of existing structures are afforded certain rights to shoreline protections. The interpretation of what constitutes “existing” as being what existed prior to the effective date of the Coastal Act, January 1, 1977, compels communities to accept “Managed Retreat” as the accepted response to Sea Level Rise (SLR), as it eliminates their legal rights to defend their properties under the Coastal Act. SCCa believes managed retreat can be a commonsense land use practice, especially in rural areas where existing structures can be relocated further inland. However, in areas such as those defined in the Santa Cruz County LCPA as “Shoreline Protection Exception Area” (SPEA) managed retreat is not practical. The County of Santa Cruz must be allowed to defend both public access to the shoreline and private property from wave attack. This is a geographically focused response that meets the specific needs of their community.

The following excerpt from the staff report for the East Cliff Drive County Parkway (CDP 0-07-19 & A-3-SCO-07-015) also clarifies the Coastal Commission Staff’s interpretation of existing by stating that the structures along East Cliff Drive are existing and subject to the shoreline protection rights of Section 30235 of the Coastal Act.

“Proposed Armoring Is Necessary. There are clearly significant blufftop recreational resources atop the bluff in the East Cliff Drive right-of-way, and staff believes that the seawalls are necessary to protect existing structures in danger from erosion (East Cliff Drive and related pedestrian/bicyclist trail and utilities) and that other alternatives are not capable of adequately protecting such structures.” (page 3)

For further comments related to the definition of “existing”, we respectfully ask that you refer to the comment letter submitted by Steven H. Kaufman of Nossaman, LLP on October 7, 2022, to the California Coastal Commission regarding Agenda Item F10e. We trust Mr. Kaufman’s perspective as he served from 1977 (the year the Coastal Act became effective) to 1991 at the California Attorney General’s office, representing the California Coastal Commission as well as other state agencies including the California State Lands Commission. It should be noted that Mr. Kaufman was the recipient of the California Attorney General’s Award for Excellence in 1990.

### **Shoreline Protection**

SCCa would like to draw your attention to the blanket statements made in the staff report that any form of shoreline protection is detrimental. The Coastal Commission staff is repeating different versions of this message throughout the staff report. The specific conditions of the Santa Cruz coast must be understood in order to provide an informed response to these assertions, and to do so requires differentiation between the various forms of shoreline protection. The County's intent is described clearly in Exhibit B Public Safety Element Amendments, page 27:

### **GUIDING PRINCIPLES: REGULATION OF PROPOSED DEVELOPMENT ACTIVITIES ON COASTAL BLUFFS & BEACHES**

“Strive to avoid placement of new rip rap that is typically associated with “emergency permits”, in favor of early planning for construction of modern more-vertical armoring approaches in identified urbanized

"shoreline protection exception areas" that would reduce or replace rip rap, in a manner that would lead to improved public access and improved visual resources during the planning horizon for the expected life of structures, when armoring is determined to be appropriate. Establish triggers for when property owners would be required to address imminent danger from coastal hazards."

The Coastal Commission approved the East Cliff Drive County Parkway referred to as the "Pleasure Point Parkway and Seawall project" which serves as a model for proposed Shoreline Protection Exception Area (Refer to Exhibit 1). The staff report makes reference to this approval in Footnote 26:

"<sup>26</sup> And indeed, the Commission recognized as much in approving the Pleasure Point Parkway and Seawall Project in 2007, conditioning it upon also enhancing the Parkway for public use, where the Commission accepted the trade off of potential loss of beach for the benefit of a protected public CCT and parkway open to the coast and ocean."

SCCa supports the County of Santa Cruz policies that provide for the inclusion of community-wide solutions for shoreline protection through collaboration among public agencies, special districts (GHADs) and private property owners. There are many legally permitted shoreline protection devices within the Opal Cliffs and Pleasure Point neighborhoods which are included in the SPEA that can continue to be maintained (Refer to Exhibit 2). The County is proposing to exchange this collection of disparate materials which hold a large footprint on the beach (Exhibit 3) for a **zero-footprint modern uniform bluff stabilization soil-nail wall** (Refer to Exhibit 4) to include an extension of the with a 16' wide blufftop public walkway (Exhibit 5). Should the Commission choose to do so, you can provide direction to the County of Santa Cruz to more narrowly define the activities of the Shoreline Protection Exception Area to what was approved by the Coastal Commission in December of 2007 for the East Cliff Drive County Parkway/Pleasure Point Parkway and Seawall Project, and certify this document.

### **Neighborhood Solutions**

SCCa appreciates that the Coastal Commission staff report (Page 59) indicates the CCC is open to Neighborhood solutions.

"In addition, the Commission here does not intend to 'shut the door' on exploring the concept of 'neighborhood-scale adaptation,' <sup>82</sup> and does not intend its action here to be construed as an action evincing an intent to deny all such proposals moving forward.

<sup>82</sup> The concept of 'neighborhood-scale' or 'community adaptation' is premised on the idea that there may be sections of shoreline for which strict application of the Coastal Act might not allow armoring, but where the context might suggest that armoring is the more practical approach that minimizes and better mitigates for impacts to coastal resources overall (e.g., a mostly armored shoreline that is unlikely to lead to significant and naturally occurring beach space if there was no armoring, etc.), at least in the short term, and when it is accompanied by appropriate mitigation for impacts and triggers for future shoreline planning to identify preferred longer term outcomes."

SCCa believes that neighborhood solutions are the basis of Santa Cruz County's LCPA (Coastal Hazards).

### **Balanced Approach, not an either/or choice**

Lastly, SCCa respectfully disagrees with the content of this excerpt from the staff report, Page 56.

"If the shoreline were allowed to react to such factors naturally, including were it allowed to naturally erode and allow for new beaches and new surfing areas to naturally form, then those natural processes would likely be sufficient to maintain these resources indefinitely. At the same time, however, the County's more urban shoreline is also fronted by significant development, including public roads and utilities, but mostly by private high-priced residential development (ranging in value from some \$5 million to \$10 million or more for each such unit), and allowing nature to take its course in that way would be at the expense of such development. On the other hand, a choice to protect such development in place, such as via shoreline armoring, would be at the expense of these beach and ocean recreational resources." (Emphasis added).

We do not believe that the Coastal Commission is faced with an either/or choice when it comes to coastal policy decisions as we describe in the above section entitled **Shoreline Protection**. A balanced approach was taken by the Coastal Commission to protect the shoreline and existing structures with the approval of the East Cliff Drive County Parkway on December 13, 2007, CDP-07-19 & A-3-SCO-07-015 approved with conditions (Refer to Exhibit 1). Coastal Commission staff concludes their recommendations with:

"Pleasure Point and the Live Oak beach area as a whole are important recreational assets for Live Oak residents, other County residents, and visitors to the area. The site includes a portion of the largest marine sanctuary in the nation, and a surfing resource of State and worldwide significance. This project area is clearly a very special place, with valuable and irreplaceable resource value. The approved project will serve to protect and improve an important and very popular component of East Cliff Drive and the California Coastal Trail for public recreational access in a manner that should blend into the community aesthetic as part of the defining element that it is. The beach area at the toe of the bluffs will be enhanced by the removal of significant rock and concrete debris, and impacts to offshore surfing areas should not be significant. All things considered, staff believes that the project, as conditioned, is consistent with the LCP and the Coastal Act and that it is the most appropriate public policy and planning outcome for this stretch of coast." (page 5)

The Santa Cruz community now has years of experience with the East Cliff Drive County Parkway to prove these adaptation measures have been effective, and have not resulted in negative impacts.

### **Regulatory Takings**

Property owners are afforded certain rights and those rights are delineated in The Fifth Amendment of the US Constitution and the Constitution of the State of California Article I - Declaration of Rights - Section 1. Should the CCC take actions that require a property owner to allow the ocean to consume their structure, effectively taking it for a public use, it is imperative that there be an established mechanism to pay full market value for the property that is being sacrificed for the planning goals of preserving the beach and comport with the Takings reference in the Coastal Act, Section 30010.

### **Consensus**

SCCa appreciates the staff's acknowledgement of some of the valuable aspects of the County's LCPA on Page 58, and agrees that there are many points of consensus:

"Fortunately, the County's proposal does include many forward-thinking elements that can form the foundation for a successful LCP coastal hazards amendment. In particular, the proposal clearly understands the phenomenon of coastal hazards as affected by sea level rise, and points to the need for such things as using best available science, applying hazard disclosures for properties in harm's way, allowing managed retreat in rural and less developed portions of the County, and deferring to future shoreline management planning to fine tune LCP provisions in light of changing future context. It

appears that these types of provisions need to and can be extricated from the rest of the text to help form a number of consensus points almost immediately.”

### **Conclusion**

In conclusion, SCCa commends the County of Santa Cruz for their unanimous vote to bring their adopted plan to you for certification, rather than withdrawal of their plan from your Agenda. A number of jurisdictions have chosen to withdraw their LCPA from the process of certification by the Coastal Commission, after expending significant resources to study SLR in their communities including extensive stakeholder involvement, summarizing SLR risks and vulnerabilities to said risks, and drafting policy to address SLR (largely funded with State grant monies).

At your September 8, 2021 Coastal Commission hearing, then Chair Padilla spoke about listening to each other and trying to find a pathway forward.

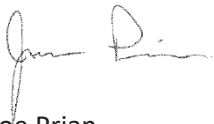
“...the only way of doing this is not to withdraw, and I think there needs to be better communication around that in advance...but I think on the other end of that, we need to be prepared to be able to work with the local jurisdictions around timelines and around taking more time to resolve issues...

...we really need to be listening to each other and trying to find a pathway to getting these things certified and getting some real resiliency planning and incentivization going. “

We look forward to a constructive discussion with the Coastal Commissioners during the upcoming hearing. SCCa understands there is a recommendation for denial from your staff which would lose the opportunity to achieve an important certification capitalizing on years' worth of work. We understand that the path forward may be difficult for the Commission; however, the Commission could add Commissioner-sponsored suggested modifications during the hearing and a recommendation for certification based on those modifications, which is a viable option for your consideration.

Smart Coast California is committed to protecting our coast so that Californians and our many visitors will continue to enjoy its beauty for years to come. Thank you again for the opportunity to provide our comments on the Santa Cruz County Local Coastal Program Amendment (Coastal Hazards Update). We appreciate your service, and will be available in-person for testimony, further comment and answers to any questions you may have at the hearing in San Diego on Friday October 14, 2022.

Sincerely,



Joe Prian  
President  
Smart Coast California

## **Exhibit 1**

### **Pleasure Point/East Cliff Drive Parkway and Seawall**

Redevelopment of East Cliff Drive between 32<sup>nd</sup> and 41<sup>st</sup> Avenues

Coastal Commission Hearing December 13, 2007

CDP 0-07-19 & A-3-SCO-07-015

Approved by Coastal Commission with Conditions

<https://documents.coastal.ca.gov/reports/2007/12/Th13a-s-12-2007.pdf>

Project description: Reconstruct East Cliff Drive between 32nd and 41st Avenues (including drainage, water quality, park, trail and related public recreational improvements) and construct full bluff seawalls at two locations just seaward of East Cliff Drive (one between 32nd and 36th Avenues and another at 41st Avenue at the Hook), including removal of an abandoned restroom, removal of rip-rap and rubble on the beach, and the construction of three beach and surf access stairways (one new stairway and two replacement stairways).

Summary and Conclusion of Coastal Commission Staff Report, dated November 30, 2007:

#### **Summary** of Staff Recommendation, page 1

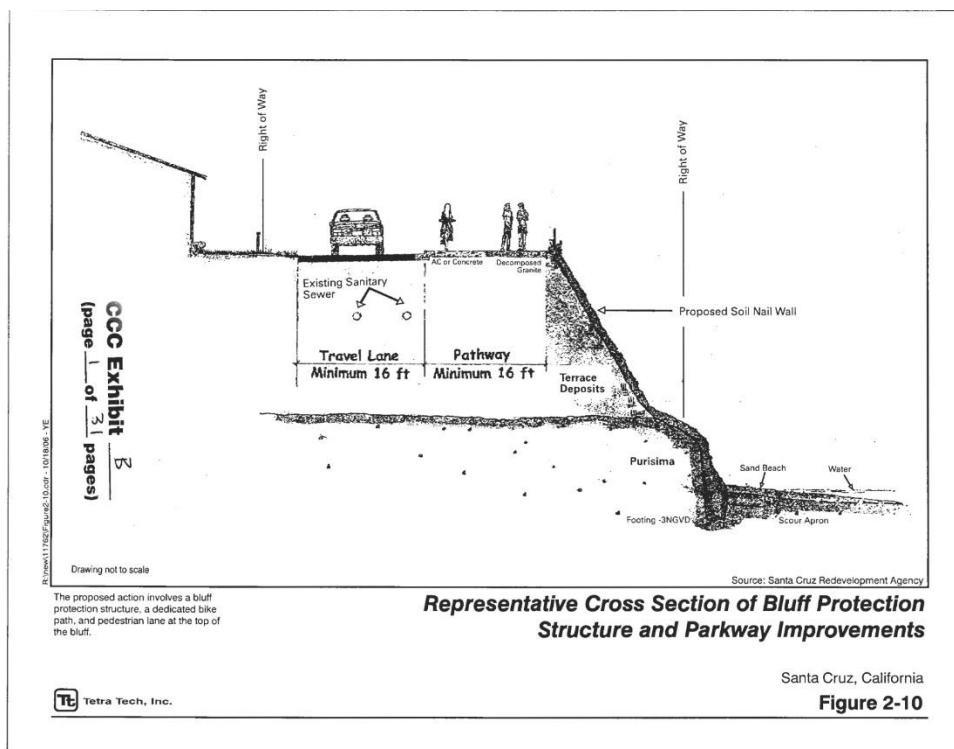
“Staff believes that the project, if conditioned as recommended to avoid coastal resource impacts and to mitigate for those that are unavoidable, is consistent with the LCP and the Coastal Act, and will result in significant public recreational access enhancement in an important public access area. Staff recommends that the Commission find substantial issue with the appeal, and approve coastal permits for the project. Motions and resolutions to do this are found on staff report pages 10 (for finding substantial issue) and 10-11 (for approval of the project).”

#### **Proposed Armoring is Necessary**, page 3

“Proposed Armoring Is Necessary. There are clearly significant blufftop recreational resources atop the bluff in the East Cliff Drive right-of-way, and staff believes that the seawalls are necessary to protect existing structures in danger from erosion (East Cliff Drive and related pedestrian/bicyclist trail and utilities) and that other alternatives are not capable of adequately protecting such structures. There is inadequate space within which to move endangered structures inland to avoid the need for armoring, or even to delay the need for armoring in any sort of meaningful way. The dense residential neighborhood of Pleasure Point is directly inland of the road at this location, and even were East Cliff Drive to be abandoned and allowed to naturally erode into the ocean, eventually (and in the relatively short term), assuming current California law regarding existing structures, and lacking a substantial social and financial commitment to planned retreat, armoring would be installed to protect the row of houses directly inland of East Cliff Drive. This would not be uncommon in coastal Live Oak, a relatively urbanized area where most of the shoreline is armored (including surrounding the project area). To the extent that space still existed in the right-of-way seaward of these houses at that point in time, there would still be some through recreational access, but its value would be diminished because the amount of space would be significantly less. The larger the right-of-way, the more space available to accommodate public recreational enhancements such as trails, overlooks, benches, picnic areas, restrooms, et cetera. The amount of space, and the stability of it over the long-term, is also directly related to the amount of improvements that may be pursued for it. Staff believes it is clear that armoring is necessary to protect the important public structures present in East Cliff Drive.”

#### **Conclusion** of Staff Recommendations, page 5

"Pleasure Point and the Live Oak beach area as a whole are important recreational assets for Live Oak residents, other County residents, and visitors to the area. The site includes a portion of the largest marine sanctuary in the nation, and a surfing resource of State and worldwide significance. This project area is clearly a very special place, with valuable and irreplaceable resource value. The approved project will serve to protect and improve an important and very popular component of East Cliff Drive and the California Coastal Trail for public recreational access in a manner that should blend into the community aesthetic as part of the defining element that it is. The beach area at the toe of the bluffs will be enhanced by the removal of significant rock and concrete debris, and impacts to offshore surfing areas should not be significant. All things considered, staff believes that the project, as conditioned, is consistent with the LCP and the Coastal Act and that it is the most appropriate public policy and planning outcome for this stretch of coast."





## Exhibit 2

### Rockview Drive Seawall

Coastal Commission Meeting, February 6, 2019

Exhibits, W16b, 3-16-0446 (Rockview Drive Seawall)

Approved with Conditions

<file:///Users/lynettesmacbookpro/Desktop/W16b-2-2019-report.pdf>

<file:///Users/lynettesmacbookpro/Desktop/W16b-2-2019-exhibits.pdf>



Coastal Commission Meeting, February 6, 2019

Exhibits, W16b, 3-16-0446 (Rockview Drive Seawall)

**Project Description:** Rockview Seawall - Coastal Permit application to recognize emergency repair work done on an existing retaining wall (Emergency Permit #G-3-16-0005). Work performed includes the construction of a 75' long, 8-9' deep cutoff wall and the restacking of existing Rip Rap along the sides of the seawall.



**Timeline:** Application Received - 05/13/2016; Coastal Commission Hearing Date - 02/06/2019 (approved with conditions).



### Exhibit 3



Source: “Coastal Plans at the Local Level” presentation by Santa Cruz County Supervisor Koenig, First District at Smart Coast California Policy Summit, May 2022.

### Exhibit 4



Source: “Coastal Plans at the Local Level” presentation by Santa Cruz County Supervisor Koenig, First District at Smart Coast California Policy Summit, May 2022.

### Exhibit 5



Source: “Coastal Plans at the Local Level” presentation by Santa Cruz County Supervisor Koenig, First District at Smart Coast California Policy Summit, May 2022.