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19 **Pro Hac Vice motion to be filed*

20 Attorneys for Petitioners

21 **SUPERIOR COURT OF CALIFORNIA**
22 **COUNTY OF SAN LUIS OBISPO**

23 **DAVID TIBBITTS and STEPHANIE HEIGEL-**
24 **TIBBITTS,**

25 Petitioners,

26 v.

27 **CALIFORNIA COASTAL COMMISSION and JOHN**
28 **AINSWORTH, in his official capacity as Executive**
Director of the California Coastal Commission,

Respondents.

No. _____

**VERIFIED PETITION FOR
ALTERNATIVE WRIT OF MANDATE AND
WRIT OF MANDATE**

(CODE CIV. PROC. §§ 1085, 1087)

INTRODUCTION

1
2 1. The California Coastal Commission, not content with the extraordinary powers and
3 jurisdiction granted by the Legislature, continues to feed its voracious appetite for ever more
4 authority, no matter the consequences for homeowners subject to its precarious and arbitrary will.

5 2. Here, Petitioners Stephanie Heigel-Tibbitts and David Tibbitts obtained a coastal-
6 development permit (CDP) from San Luis Obispo County to demolish their existing house and
7 construct a new residence on their ocean-side Property. A new home is urgently needed. Not only
8 does the existing house show its age, but its narrow confines severely restrict the movements of
9 David, who has been wheelchair-bound since suffering a debilitating stroke in April 2018. David's
10 primary caregiver Stephanie has, among other things, torn her meniscus and injured her groin
11 maneuvering David in and around the 1932-built house. The permit-approved plans for their new
12 home would create an open floorplan and handicap-accessible entries so that David can move about
13 independently. David's independence will also ease Stephanie's loving burden.

14 3. The Commission, however, has its own agenda. Two Commissioners appealed the
15 County's CDP. This appeal effected an automatic stay of the CDP—preventing the Tibbittses from
16 proceeding with their project. The Commission then agreed with two of its Commissioners and
17 found “substantial issue” with the CDP's compliance with the Coastal Act. This “substantial issue”
18 finding imposes a *mandatory duty* upon the Commission to conduct a *de novo* hearing. Pub. Res.
19 Code §§ 30621(a) & 30625(b). But the Commission has defied and continues to defy its duty.

20 4. The Commission claimed “substantial issue” with the CDP *more than two-and-a-*
21 *half years ago* (June 2019), but it has since dithered and obfuscated and refused the Tibbittses'
22 repeated requests to hold the mandatory *de novo* hearing. As of the filing of this Petition, the
23 Commission has refused to even schedule a hearing. Worse, the Commission contends that there is
24 “no legal deadline” to do so; in the Commission's view, it can schedule the *de novo* hearing
25 whenever it wants—months or even years from now. Meanwhile, Stephanie and David's lives are
26 put on hold.

27 5. Commission Staff admits that the Tibbittses' project is “small,” but Staff has
28 defended the Commission's scheduling delay because the project's “potential precedential nature

1 of how to deal with demo/rebuilds with existing armoring structures [*i.e.*, ripraps] in Cayucos
2 generally” is (Staff says) “an important state-wide matter.”

3 6. Thus, the truly important matter for the Commission—and the reason for its delay—
4 is its attempt to establish precedent supporting its claim of jurisdiction that may exceed the scope
5 of authority granted to the Commission by the California Coastal Act.

6 7. Here, the Commission’s sole basis for challenging the County’s CDP is a riprap
7 revetment—a small seawall protecting against erosion—on the Tibbittses’ Property. The
8 Tibbittses’ expert advised them that the riprap was constructed *before* the Coastal Act was adopted.
9 As such, the Tibbittses’ Property would be outside of the Commission’s jurisdiction. *See, e.g.,*
10 *Barrie v. Cal. Coastal Comm’n*, 196 Cal. App. 3d 8, 20–21 (1987) (“Implicit in the section 30212,
11 subdivision (b)(4) exclusion is that the repair or renovation is to an existing seawall which an
12 individual is entitled to maintain either because the individual has already obtained a Commission
13 permit to have a permanent seawall at that location or because the seawall existed before the Coastal
14 Act became effective.”). The Commission disagrees.

15 8. This question would be resolved at the *de novo* hearing—except the Commission
16 *refuses* to schedule it.

17 9. The Commission, therefore, has delayed—and continues to delay—the Tibbittses’
18 *de novo* hearing so that it has enough time to prepare what it hopes will be a precedential decision
19 concerning its own jurisdiction. The Tibbittses’ interests are irrelevant to the Commission.

20 10. Further, the Commission has had all the information it needs to make a decision
21 since—at the latest—July 2020, when the Tibbittses submitted a supplemental geotechnical report.
22 But this supplemental information did not change Staff’s recommendation. Therefore, the
23 Commission has, in fact, had all the information it wants since **June 2019**—when the Commission
24 found “substantial issue.” Indeed, Commission Staff admitted (in December 2020) that it had been
25 willing to proceed soon after this June 2019 “substantial issue” finding.

26 11. In short, the Commission is abusing the hearing process—at the Tibbittses’
27 expense—to establish helpful (to the Commission) precedent.

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1 12. Finally, as noted above, the Commission brazenly contends that it is under no legal
2 obligation whatsoever to timely schedule and hold the statutorily required *de novo* hearing. In its
3 “Appeal Information Sheet,” the Commission asserts that there “is *no legal deadline* for the
4 Commission to act on the *de novo* phase of an appeal.” See [https://documents.coastal.ca.gov/assets/
5 cdp/Appeal-Information-Sheet.pdf](https://documents.coastal.ca.gov/assets/cdp/Appeal-Information-Sheet.pdf) (p. 5) (emphasis added). Commission Staff-member Brian
6 O’Neill told the Tibbittses’ counsel that while he could provide a target date, “nothing c[ould] be
7 considered certain, particularly when there is *no specific legal deadline*” to hold the hearing.

8 13. The Commission thus contends that it is not subject to the due process guarantees
9 of the California and Federal Constitutions.

10 14. But, to the contrary, the Due Process of Law Clauses in both the California and
11 United States Constitutions preclude government from depriving people of their property rights and
12 their rights to reasonable and timely resolution of disputes without a meaningful opportunity to be
13 heard within a reasonable period of time. See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532,
14 547 (1985). Process delayed is process denied.

15 15. By endlessly delaying even the mere scheduling of the statutorily required *de novo*
16 hearing, the Commission has denied the Tibbittses their due process right to a meaningful
17 opportunity to be heard at a meaningful time.

18 16. The Tibbittses therefore ask the Court to order the Commission to immediately
19 schedule and hold the mandatory *de novo* hearing. Pub. Res. Code §§ 30621(a), 30625(b). The
20 Commission, of course, retains the discretion to rule against the Tibbittses at this hearing, but the
21 Commission cannot—consistent with the California and United States Constitutions and California
22 statutes—endlessly postpone the exercise of its discretion. The Tibbittses have the right to be heard
23 *at a meaningful time*, but they have been denied that right. They ask the Court to enforce this basic
24 constitutional guarantee.

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1 **PARTIES**

2 17. Petitioners David Tibbitts and Stephanie Heigel-Tibbitts, husband and wife, own
3 certain real property in Cayucos, San Luis Obispo County, California (Property), described further
4 below.

5 18. Respondent California Coastal Commission is a state administrative body operating
6 under the California Coastal Act, Pub. Res. Code § 30000, *et seq.* The Coastal Act requires that the
7 Commission act in a lawful manner and consistent with the constitutional rights of private property
8 owners. Pub. Res. Code § 30001.5(c).

9 19. Respondent John Ainsworth is the Executive Director of the California Coastal
10 Commission. He is sued in his official capacity only.

11 **JURISDICTION AND VENUE**

12 20. This Court has jurisdiction over this Petition pursuant to Sections 1085 and 1087 of
13 the California Code of Civil Procedure.

14 21. Venue is proper in the county in which “the cause, or some part of the cause, arose”
15 for a suit against a public officer’s act. Code Civ. Proc. § 393. *Regents of Univ. of Cal. v. Sup. Ct.*,
16 3 Cal. 3d 529, 537–38 (1970). A cause arises where a petitioner is injured by the action complained
17 of. *Cal. State Parks Found. v. Sup. Ct.*, 150 Cal. App. 4th 826, 834 (2007). The Commission’s
18 failure to timely act injured and continues to injure the Tibbittses in San Luis Obispo County, where
19 their Property is located. Venue is therefore proper in San Luis Obispo Superior Court. In addition,
20 venue is proper in San Luis Obispo County under Code of Civil Procedure sections 393 through
21 395 because enforcement of the challenged provisions of the Local Coastal Program will occur in
22 the County.

23 22. The only means by which review of the Commission’s actions—and refusal to act—
24 may be had is through writ of mandate or other equitable relief. This action is, therefore, appropriate
25 and required because no other plain, speedy, and adequate remedy is available to the Tibbittses in
26 the normal course of law. *See* Code Civ. Proc. § 1086.

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1 **APPLICABLE LAW**

2 23. The California Coastal Act, Pub. Res. Code § 30000, *et seq.*, requires local
3 governments with jurisdiction over Coastal Zone lands to adopt a Local Coastal Program (LCP),
4 which in turn must be certified by the California Coastal Commission. *Id.* § 30500.

5 24. After certification of an LCP, an action taken by a local government on a CDP may
6 be appealed to the Commission for certain types of developments, including locally approved
7 developments “between the sea and the first public road paralleling the sea or within 300 feet of
8 the inland extent of any beach or of the mean high tideline of the sea where there is no beach,
9 whichever is the greater distance.” Pub. Res. Code § 30603(a)(1).

10 25. Certain “interested” parties, including any two Commissioners on the Coastal
11 Commission, may file such an appeal. Pub. Res. Code §§ 30603, 30625(a).

12 26. An appeal under Pub. Res. Code § 30603 “shall be limited to an allegation that the
13 development does not conform to the standards set forth in the certified local coastal program or
14 the public access policies set forth in this division.” *Id.* § 30603(b)(1).

15 27. When an appeal of “any action on any development by any local government” is
16 filed with the Commission, “the operation and effect of that action shall be stayed pending a
17 decision on [administrative] appeal.” Pub. Res. Code § 30623.

18 28. Upon such an appeal, the Commission must determine whether a “substantial issue”
19 exists with respect to the grounds on which an appeal was filed. *See* Pub. Res. Code § 30625(b).
20 The Commission refers to this as the “‘substantial issue’ phase of an appeal.” *See* [https://documents.
21 coastal.ca.gov/assets/cdp/Appeal-Information-Sheet.pdf](https://documents.coastal.ca.gov/assets/cdp/Appeal-Information-Sheet.pdf) (p. 4); A true and correct copy is attached
22 hereto as Exhibit C. *See id.* at 69.

23 29. If the Commission finds a “substantial issue,” it *must* hold a *de novo* hearing to
24 resolve the appeal. Pub. Res. Code §§ 30621 & 30625(b).

25 30. This Commission refers to this *de novo* hearing as the “second phase” of an appeal.
26 *See* <https://documents.coastal.ca.gov/assets/cdp/Appeal-Information-Sheet.pdf> (p. 5); Ex. C at 70.

27 31. Commission regulations require that the *de novo* hearing be set and heard
28 expeditiously. *See* 14 Cal. Code Regs. §§ 13115; 13062 (procedures should “afford[] applicants

1 expeditious consideration”); 13064 (“[C]ommission’s public hearing . . . shall be conducted . . . to
2 render a decision without unnecessary delay.”).

3 32. The Commission’s Executive Director is responsible for, among other things,
4 setting a hearing on the appeal. 14 Cal. Code. Regs. §§ 13062, 13063(a)(3), 13115.

5 33. As of the date of the filing of this Petition—two-and-a-half years after the
6 Commission found “substantial issue” here—the Commission has not even scheduled the
7 Tibbittses’ *de novo* hearing.

8 **FACTUAL ALLEGATIONS**

9 ***The Tibbittses plan to improve their quality of life***

10 34. In 1995, husband and wife David Tibbitts and Stephanie Heigel-Tibbitts purchased
11 a residentially zoned parcel of real property on the California coast, at 1210 Pacific Avenue,
12 Cayucos, San Luis Obispo County (Property), within the County’s LCP.

13 35. Like many nearby properties, the Tibbittses’ Property is fronted by an existing riprap
14 revetment, which includes a built-in staircase between the backyard and the beach.

15 36. A “riprap” or “riprap revetment” is a constructed seawall that protects coastal
16 property from damages caused by erosion.

17 37. The Property also includes a 1,116 square-foot house originally built in 1932.

18 38. The Tibbittses have long planned to renovate or replace this house and retire there.

19 39. The existing house is in poor condition. It lacks a modern, open floorplan and instead
20 contains many walls and narrow passageways. The electrical system in the house is a constant
21 worry for the Tibbittses. Stephanie has experienced electrical shocks, and outlets have come off the
22 wall. Plumbing problems persist as well; every three months, the Tibbittses must call a plumber to
23 unclog backup in the plumbing system. The house has not received any major upgrades or
24 renovations for many years.

25 40. Accordingly, in early 2018, David applied for a CDP from San Luis Obispo County
26 to demolish the existing house and build a new two-story house, with an open floorplan, an elevator,
27 an attached garage, and a deck, along with additional features that will give David and Stephanie
28 the retirement they have long worked and planned for.

1 46. Accordingly, in March 2019, San Luis Obispo County issued a CDP (with certain
2 conditions not relevant here). *See* Ex. B at 40–41, 47–54.

3 ***Commissioners appeal the project to the Commission, which claims jurisdiction***

4 47. More than two-and-a-half years ago—in April 2019—Coastal Commissioners
5 Peskin and Howell filed an appeal, pursuant to Pub. Res. Code §§ 30603 and 30625. Ex. B at 55–
6 63.

7 48. When an appeal of “any action on any development by any local government” is
8 filed with the Commission, “the operation and effect of that action shall be stayed pending a
9 decision on appeal.” Pub. Res. Code § 30623. Therefore, upon the appeal of the County’s CDP
10 here, the operation and effect of the CDP has been stayed *indefinitely*. The Tibbittses can neither
11 proceed with their plans, nor force the Commission to conduct the *de novo* hearing and enter a final
12 decision.

13 49. As summarized by Staff, Commissioners Peskin and Howell claimed that the CDP
14 “raise[d] questions of consistency with the San Luis Obispo County certified Local Coastal
15 Program (LCP) and the Coastal Act’s public access policies because: (1) the approved project
16 includes a new residential structure that is protected by shoreline armoring, which is prohibited by
17 the LCP; (2) even if the riprap were not prohibited by the LCP and was legally established, the
18 armoring is not necessary to protect the new residence; and (3) the riprap is inconsistent with LCP
19 and Coastal Act public access provisions.” A true and accurate copy of the Appeal Staff Report is
20 attached hereto as Exhibit A; *see id.* at 25, 31. This document may also be found here: [https://
21 documents.coastal.ca.gov/reports/2019/6/Th14c/Th14c-6-2019-report.pdf](https://documents.coastal.ca.gov/reports/2019/6/Th14c/Th14c-6-2019-report.pdf) (last visited Dec. 7,
22 2021).

23 50. Commission Staff prepared a report in May 2019 and recommended a finding of
24 “substantial issue” with the County’s Permit. *See* Ex. A.

25 51. And in June 2019 the Commission—without considering testimony or evidence
26 from the Tibbittses or their representatives—determined that a “substantial issue” existed with
27 respect to the County’s CDP.

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1 52. According to the Tibbittses’ expert, the riprap on the Tibbittses’ Property was built
2 before 1972. True and correct copies of excerpts of the Tibbittses’ expert reports are attached as
3 Exhibit D (July 2020) and Exhibit E (December 2019). *See* Ex. D at 73; *see also* Ex. E at 81–82.

4 53. The California Coastal Act was enacted in 1976. *See* Pub. Res. Code § 30000 *et seq.*

5 54. Based on the Tibbittses’ understanding that their Property’s riprap predates the
6 Coastal Act, the riprap would not be subject to the Coastal Act and would be, therefore, beyond the
7 jurisdiction of the Commission. *See, e.g., Barrie*, 196 Cal. App. 3d at 20–21 (“Implicit in the section
8 30212, subdivision (b)(4) exclusion is that the repair or renovation is to an existing seawall which
9 an individual is entitled to maintain either because the individual has already obtained a
10 Commission permit to have a permanent seawall at that location or because the seawall existed
11 before the Coastal Act became effective.”). *See also* San Luis Obispo Local Coastal Program at §§
12 23.01.030, 23.05.090 (not requiring removal of existing shoreline-protective devices), [https://www.
13 slocounty.ca.gov/Departments/Planning-Building/Forms-Documents/Ordinances/Coastal-Land-
14 Use-Ordinance-\(Title-23\).pdf](https://www.slocounty.ca.gov/Departments/Planning-Building/Forms-Documents/Ordinances/Coastal-Land-Use-Ordinance-(Title-23).pdf) (last visited Dec. 7, 2021).

15 55. The Commission lacks authority to impose additional requirements or policies into
16 an existing LCP. *See* Pub. Res. Code § 30519; *Schneider v. Cal. Coastal Comm’n*, 140 Cal. App.
17 4th 1339, 1348 (2006).

18 56. The Commission also lacks power to amend an LCP through its appeal process.

19 57. Therefore, the Tibbitts believe that the Commission’s demand to remove the
20 existing riprap on their Property is unlawful.

21 58. The Commission disagrees with the Tibbittses’ argument concerning the
22 Commission’s jurisdiction over the Tibbittses’ Property.

23 59. This question, among others, would be resolved at the *de novo* hearing—except that
24 the Commission refuses to schedule the hearing.

25 ***The Commission puts the Tibbittses’ plans on hold—indefinitely***

26 60. Under Pub. Res. Code §§ 30621(a) and 30625(b), following a “substantial issue”
27 finding, the Commission is required to hold a *de novo* hearing to resolve the appeal.

28 61. The Commission generally schedules and conducts its hearings monthly.

1 62. Yet, since it made its “substantial issue” determination here in June 2019, the
2 Commission has never once placed the appeal of the Tibbittses’ CDP on its schedule.

3 63. The Commission contends that there “is *no legal deadline* for the Commission to
4 act on the *de novo* phase of an appeal.” *See* Ex. C at 70, Commission’s Appeal Information Sheet,
5 at p. 5 (emphasis added).

6 64. And, consistent with its claim, the Commission has delayed, obfuscated, and refused
7 to schedule a hearing on the appeal—despite its statutory obligation to conduct a hearing and the
8 repeated requests from the Tibbittses to do so.

9 65. In response to requests from Commission Staff concerning the riprap, the Tibbittses
10 submitted updated expert reports in December 2019 and July 2020. *See* Ex. D and Ex E.

11 66. According to these reports, removal of the Tibbittses’ riprap will cause harm to their
12 Property and to the properties of their neighbors. *See, e.g.*, Ex. D at 74–75.

13 67. Nonetheless, Commission Staff did not change its original recommendation—made
14 in June 2019—that the Tibbittses’ riprap be removed.

15 68. In December 2020—a year and a half after the Commission found “substantial
16 issue” with the CDP and approximately six months after the Tibbittses submitted their supplemental
17 geotechnical report—the Tibbittses’ counsel sent a letter to the Commission requesting that the *de*
18 *novo* hearing be set for the Commission’s January 13–15, 2021 meeting. True and correct copies
19 of correspondence between the Commission and the Tibbittses’ representatives are attached as
20 Exhibit F. *See id.* at 86–89.

21 69. Counsel informed the Commission that the “extraordinary delay in bringing this
22 appeal to a close is by no means a ‘normal’ part of the land-use permitting process and, at a
23 minimum, violates Mr. Tibbitts’ due process rights.” *Id.* at 87.

24 70. In response, Commission Staff member Brian O’Neill said the Commission would
25 “not be able to bring the Tibbits [sic] project to hearing for January, but [was] committed to bringing
26 the *de novo* review as soon as possible.” *Id.* at 95. Mr. O’Neill claimed that the Commission’s delay
27 was attributable to the Tibbittses’ request for additional time to provide an updated geotechnical

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1 report (*id.*)—which, as noted above, was provided in response to Commission Staff’s request and
2 which did not alter Staff’s recommendation.

3 71. In a follow-up message (December 9, 2020), the Tibbittses’ counsel asked why the
4 Commission could not set the matter for a *de novo* hearing. Ex. F at 94.

5 72. O’Neill claimed that it was a “difficult time,” that the Commission had “an already
6 thin staff stretched further due to colleagues taking leaves of absence,” and that the agency was
7 “behind due to the covid-related hearing cancellations that occurred earlier in the year.” *Id.* at 93,
8 94.

9 73. But the true reason for the Commission’s delay was strategic. When asked by the
10 Tibbittses’ counsel why the Commission could not quickly resolve the appeal of this small matter,
11 O’Neill admitted that although the Tibbittses’ project was “small,” the *de novo* hearing was being
12 delayed because the project’s “potential precedential nature of how to deal with demo/rebuilds with
13 existing armoring structures [*i.e.*, ripraps] in Cayucos generally” is (to the Commission) “an
14 important state-wide matter.” *Id.* at 94.

15 74. In other words, the Commission admits that it is taking advantage of its unilateral
16 scheduling power—at the Tibbittses’ expense—to establish helpful (to the Commission) precedent.

17 75. O’Neill also reiterated the Commission’s position that he could not set a hearing for
18 certain, “particularly when there is *no specific legal deadline.*” *Id.* at 94 (emphasis added).

19 76. Three weeks later, on December 28, 2020, the Tibbittses’ counsel again asked
20 O’Neill to schedule the *de novo* hearing. *Id.* at 93.

21 77. O’Neill stated he was “hoping to discuss the project and can provide you with an
22 update next week as most folks have been out of the office over the holidays.” *Id.* at 93.

23 78. The Commission did not conduct the Tibbittses’ *de novo* hearing in December 2020.

24 79. The Commission did not conduct the Tibbittses’ *de novo* hearing in January 2021.

25 80. Nearly a month later, in January 2021, the Tibbittses’ counsel asked again if there
26 had been “[a]ny progress” on setting a hearing. *Id.* at 90.

27 81. O’Neill stated that the Commission was “targeting the April hearing to bring
28 forward the *de novo* review.” *Id.*

1 82. On information and belief, on February 25, 2021, the Tibbittses’ counsel had a
2 phone call with O’Neill discussing the Commission Staff’s position regarding the riprap.

3 83. The Commission did not conduct the Tibbittses’ *de novo* hearing in February 2021.

4 84. On information and belief, O’Neill left the Commission in March 2021, and a new
5 analyst was assigned to the Tibbittses’ case file.

6 85. On March 24, 2021, the Tibbittses’ counsel emailed the Commission’s Dan Carl
7 about the *de novo* hearing. Counsel stated that O’Neill “expected our appeal to be heard at the
8 Commission’s April meetings,” which counsel hoped to confirm. Ex. F at 99.

9 86. Mr. Carl claimed that O’Neill’s departure, in combination with some Commission
10 employees taking long-term leave, meant that staff had reduced capacity to process cases. Carl told
11 counsel that these factors “will affect when this matter is ultimately set for a hearing.” *Id.*

12 87. Because Mr. Carl failed to say when the hearing would be scheduled, the Tibbittses’
13 counsel emailed again the next day and again asked for “an update on where staff is in calendaring
14 this for a hearing.” *Id.* at 98.

15 88. Kevin Kahn, a District Supervisor who had been assigned the case, said that he
16 needed “to brush up where [O’Neill] left off. But this is a priority project to bring to hearing, so my
17 best guess at this time is May or June. I will keep you up-to-date regarding timing.” *Id.*

18 89. The Commission did not conduct the Tibbittses’ *de novo* hearing in March 2021.

19 90. Nearly a month later, on April 22, 2021, the Tibbittses’ counsel asked once again
20 for confirmation regarding a hearing: “Are we confirmed for the May meetings?” *Id.* at 98.

21 91. Kahn responded, “[w]e’re still in a bit of flux right now in our office,” and “I would
22 say June or July since this project is a priority.” He also wrote, “[a]s soon as we have more
23 information regarding timing and next steps, I will let you know.” *Id.* at 97.

24 92. The Commission did not conduct the Tibbittses’ *de novo* hearing in April 2021.

25 93. The Commission did not conduct the Tibbittses’ *de novo* hearing in May 2021.

26 94. Another month went by. Another request from counsel: “Can we get a hearing on
27 this matter in June?” the Tibbittses’ counsel asked in a May 24, 2021 email. “June will be the 2-
28 year anniversary” of the Commission’s substantial-issue finding. Counsel further explained the

1 urgency of the hearing: “The delays in getting this to a de novo hearing are causing serious hardship
2 to our client, who (as you may know) is caring for a wheelchair-bound spouse in a house that is
3 simply not fit for their unique situation.” Ex. F at 107.

4 95. Demonstrating the Commission’s penchant for delay and passing the buck, Kahn
5 informed counsel that yet another employee, supervisor Ryan Moroney, had been assigned “the
6 lead planner on the project.” Kahn asserted that Moroney would “give . . . a better sense of timing
7 and next steps.” *Id.*

8 96. Counsel asked Moroney to schedule the Tibbitts’ *de novo* hearing for June 2021. *Id.*
9 at 105.

10 97. Moroney complained that “[w]e are down a couple planners,” and even though Kahn
11 had assured the Tibbittses’ counsel that their appeal was “a priority project to bring to hearing,”
12 Moroney now stated that he had “several other very high priority items with statutory deadlines
13 that are queued up over the next couple of months.” Accordingly, Moroney said that
14 “[r]ealistically,” the *de novo* hearing could “hopefully” be held during the Commission’s October
15 or November 2021 hearings. *Id.* at 104.

16 98. Counsel asked Moroney to explain the “extraordinary delay” and explicitly
17 requested “more detail about the necessity of the delay.” In particular, counsel asked why delays
18 continued when Brian O’Neill had stated in December 2020 that “staff was willing to bring the de
19 novo forward soon after the substantial issue hearing” in June 2019. As noted above, the
20 Commission Staff had not changed its analysis or conclusion since June 2019, even after the
21 Tibbittses submitted updated geotechnical reports. *Id.* at 103–04.

22 99. Moroney emailed on June 3, 2021 and said, “I don’t really have anything to add
23 beyond what I have already stated.” *Id.* at 103.

24 100. The Commission did not conduct the Tibbittses’ *de novo* hearing in June 2021.

25 101. After six weeks without a response, the Tibbittses’ counsel emailed Moroney on
26 July 14, 2021 and asked when he thought hearings would “go live / physical again.” Ex. F at 111.
27 Counsel also asked if Moroney “would . . . consider trying to get us on for” a September hearing.
28 *Id.* at 110.

1 102. Moroney did not say whether the appeal of the Tibbittses’ CDP could be heard.
2 Instead, Moroney responded, “[i]t looks like the first [live] meeting will be in October, assuming
3 nothing changes between now and then... either way your client will likely be able to participate
4 via the web interface.” *Id.* at 110.

5 103. The Commission did not conduct the Tibbittses’ *de novo* hearing in July 2021.

6 104. The Commission did not conduct the Tibbittses’ *de novo* hearing in August 2021.

7 105. The Commission did not conduct the Tibbittses’ *de novo* hearing in September 2021.

8 106. Counsel emailed Kahn—since Moroney was “not back till Sept 7”—on August 25,
9 2021, and asked whether he could “confirm a hearing on this matter for October.” *Id.* at 107.

10 107. The next day, Kahn responded that he could not confirm a hearing date, “but we do
11 intend to bring this forward in the near term.” *Id.*

12 108. Kahn said Moroney would reach out to counsel “when he’s back.” *Id.*

13 109. On September 9, 2021, counsel emailed Moroney seeking to confirm an October
14 hearing date. *Id.* at 109.

15 110. And once again, the answer was “no.” Moroney responded that the case was “not
16 going to make October,” but “[w]e are hoping to bring this item to hearing by the end of the year.”
17 *Id.*

18 111. The Commission did not conduct the Tibbittses’ *de novo* hearing in October 2021.

19 112. The Commission did not conduct the Tibbittses’ *de novo* hearing in November 2021.

20 113. The Commission has not scheduled the Tibbittses’ *de novo* hearing for December
21 2021.

22 114. The Commission does not have any hearings scheduled for January 2022.

23 115. The Commission has still not scheduled the Tibbittses’ *de novo* hearing.

24 116. The Commission has refused to set a date and, as of the date of filing this Petition,
25 the Tibbittses remain without a scheduled date for the statutorily required *de novo* hearing.

26 ///

27 ///

28 ///

1 123. The Commission has a mandatory and ministerial duty to conform its actions to the
2 standards and requirements of law. *See Morris v. Harper*, 94 Cal. App. 4th 52, 63 (2001)
3 (“[A]lthough mandamus is not available to compel the exercise of the discretion in a particular
4 manner or to reach a particular result, it does lie to command the exercise of discretion—to compel
5 some action upon the subject involved under a proper interpretation of the applicable law.”); *Bess*
6 *v. Park*, 132 Cal. App. 2d 49, 55 (1955) (“[W]here the law imposes upon [a public official] specific
7 duties and he either whimsically or arbitrarily refuses to perform those duties, or where his refusal
8 is based upon an erroneous conclusion of his legal duties, or where the right of the individual is so
9 fixed that the refusal of the official to act amounts to a clear abuse of discretion, such error will be
10 corrected in a proper judicial proceeding,” and “when [a public official] refuse[s] to act at all under
11 a misconception of the duty imposed upon him by law, the courts will correct the error.”).

12 124. Upon an appeal to a CDP and a finding of “substantial issue,” the Commission is
13 required to hold a *de novo* hearing. Pub. Res. Code §§ 30603, 30625; 14 Cal. Code Regs. § 13115.

14 125. Applicable regulations require that the *de novo* hearing be set and heard
15 expeditiously. *See* 14 Cal. Code Regs. §§ 13115; 13062 (procedures should “afford[] applicants
16 expeditious consideration”); 13064 (“[C]ommission’s public hearing . . . shall be conducted . . . to
17 render a decision without unnecessary delay.”).

18 126. The Commission has failed to conduct or even to schedule the Tibbittses’ statutorily
19 required *de novo* hearing for more than two-and-a-half years after the “substantial issue” finding
20 and a year and a half after the Tibbittses submitted their supplemental geotechnical report to the
21 Commission. As a result, the Commission has violated and continues to violate Sections 30603 and
22 30625 of the Public Resources Code, related regulations, the California Constitution’s Due Process
23 Clause, and the Federal Constitution’s Due Process Clause.

24 127. The Commission claims that there is “no legal deadline for the Commission to act
25 on the *de novo* phase of an appeal.” Ex C. at 70, Cal. Coastal Comm’n Appeal Info. Sheet, p. 5.

26 128. Commission Staff, through their statements and inaction, reveal that they, too,
27 believe they are under no legal deadline to act on the *de novo* phase of an appeal.

28 ///

1 129. Both the federal and state constitutions require that government agencies comply
2 with due process of law. U.S. CONST. amend. XIV; CAL. CONST. art. 1, § 7.

3 130. For purposes of the Fourteenth Amendment:

- 4 a. Petitioners are citizens of the United States and/or persons within the jurisdiction
5 thereof under 42 U.S.C. § 1983;
- 6 b. Respondents are persons under 42 U.S.C. § 1983; and
- 7 c. Respondents acted and continue to act under color of state law in refusing to
8 conduct the statutorily required *de novo* hearing.

9 131. Under the United States Constitution and the California Constitution, Stephanie
10 Heigel-Tibbitts and David Tibbitts have a right to be free from irrational and illegitimate
11 deprivations of their liberty or property. U.S. CONST. amend. XIV; CAL. CONST. art. 1, § 7.

12 132. Both the federal and state due process clauses also “require reasonable notice and
13 opportunity to be heard before governmental deprivation of a significant property interest.” *Horn*
14 *v. Cty. of Ventura*, 24 Cal. 3d 605, 612 (1979) (citations omitted); *see also Loudermill*, 470 U.S. at
15 547 (“The Due Process Clause requires provision of a hearing at a meaningful time.”).

16 133. The Commission’s failure to hold the *de novo* hearing deprives the Tibbittses of
17 their rights to, inter alia:

- 18 a. peacefully enjoy and make productive use of their Property; and
- 19 b. avail themselves of administrative-hearing processes and (if necessary) judicial-
20 appeal processes, a right that is a species of property protected by due process, *see*
21 *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428–29 (1982).

22 134. Unreasonable delay in conducting the *de novo* hearing is *itself* a due process
23 violation and constitutes a constructive denial of the Tibbittses’ due process right to be heard. *See*
24 *Byrd v. Haas*, 17 F.4th 692 (6th Cir. 2021); *see also Today’s Fresh Start, Inc. v. Los Angeles Cty.*
25 *Office of Edn.*, 57 Cal. 4th 197, 213 (2013) (California courts also consider “the dignitary interest
26 in informing individuals of the nature, grounds, and consequences of the action and in enabling
27 them to present their side of the story before a responsible government official.”) (cleaned up);
28 *Ryan v. Cal. Interscholastic Fed’n*, 94 Cal. App. 4th 1069 (2001) (“[P]rocedural due process under

1 the California Constitution is much more inclusive and protects a broader range of interests than
2 under the federal Constitution.”) (cleaned up).

3 135. The deprivation of the Tibbittses’ rights is especially egregious because the planned
4 construction will ease the ability of wheelchair-bound Mr. Tibbitts’ to enjoy the Property. The
5 injuries to both Stephanie, David’s primary caregiver, and David continue. And they cannot be
6 made whole for the Commission’s due process violations even if they succeed in forcing the
7 Commission to immediately conduct the *de novo* hearing.

8 136. The risk of an erroneous deprivation here is significant because the Commission
9 claims it has no legal deadline to hold a hearing and can thus indefinitely delay the statutorily
10 mandated hearing.

11 137. A writ of mandate is proper to correct the Commission’s unreasonable delay in
12 compliance with its statutory duty. *See Cal. Trout, Inc. v. Sup. Ct.*, 218 Cal. App. 3d 187, 203
13 (1990) (“The court cannot ignore the ongoing violation of a statutory mandate on the ground that
14 the violation will eventually be halted by untimely administrative action.”); *see also Yong Tang v.*
15 *Chertoff*, 493 F. Supp. 2d 148, 150 (D. Mass. 2007) (“The duty to act is no duty at all if the deadline
16 is eternity.”).

17 138. The Commission has a clear, present, and ministerial duty under California law to
18 conduct the Tibbittses’ *de novo* hearing.

19 139. The Tibbittses have a clear, present, and beneficial right to this hearing, which will
20 result in either final approval of the CDP or the Commission’s final adverse decision that they may
21 appeal to California courts. *See CAL. PRACTICE GUIDE: ADMIN. LAW Ch. 13-B [RUTTER] § 13:116*
22 (The term “beneficial” refers to “whether the petitioner has standing—*i.e.*, the petitioner must have
23 a ‘beneficial interest’ in the result sought.”).

24 140. The writ of mandate is warranted here because the Tibbittses have no other “plain,
25 speedy, and adequate remedy, in the ordinary course of law.” Civ. Proc. Code § 1086.

26 141. Because this Petition “states a prima facie case, an alternative writ must be issued
27 by the superior court.” *Cal. Corr. Peace Officers Ass’n v. State Personnel Bd.*, 10 Cal. 4th 1133,
28 1155 (1995) (citations omitted).

1 **RELIEF REQUESTED**

2 **WHEREFORE**, Petitioners pray for relief as follows:

3 1. For issuance of an alternative writ of mandate directing the Respondents to
4 immediately schedule and conduct a *de novo* hearing pursuant to Pub. Res. Code §§ 30621(a) &
5 30625(b), or, in the alternative, to show cause before this Court at a specified time and place why
6 the relief prayed for should not be granted;

7 2. For issuance of a writ of mandate directing and commanding Respondents to
8 schedule and conduct a *de novo* hearing pursuant to Pub. Res. Code §§ 30621(a) & 30625(b);

9 3. For the Court to retain jurisdiction over this matter until such time as the court has
10 determined that the Commission has fully complied with this Court’s Orders or Writ;

11 4. For damages resulting from Respondents’ unlawful delays;

12 5. For an award of attorneys’ fees pursuant to Code of Civil Procedure § 1021.5,
13 42 U.S.C. § 1988, or any other applicable authority; and

14 6. For such other and further relief as the Court may deem proper.

15
16 * * *

17
18 DATED: December 10, 2021.

19 Respectfully submitted,

20 OLIVER J. DUNFORD
21 JEFFREY W. MCCOY
22 JOHN KERKHOFF, *Pro Hac Vice motion to be filed*

23 By /s/ Oliver J. Dunford
24 OLIVER J. DUNFORD

25 *Attorneys for Petitioners*

VERIFICATION

I, DAVID TIBBITTS, declare:

I am Plaintiff and Petitioner in the above-entitled matter.

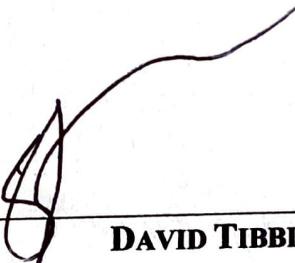
I have read the foregoing **VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDATE AND**

WRIT OF MANDATE and, except for matters stated on information and belief, the facts stated therein are true on my own knowledge, and as to those matters stated on information and belief, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing

is true and correct and that this verification was executed this 8 day of December 2021, at

Cajon, California.



DAVID TIBBITTS

VERIFICATION

I, STEPHANIE HEIGEL-TIBBITTS, declare:

I am Plaintiff and Petitioner in the above-entitled matter.

I have read the foregoing **VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDATE AND WRIT OF MANDATE** and, except for matters stated on information and belief, the facts stated therein are true on my own knowledge, and as to those matters stated on information and belief, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed this 8 day of December 2021, at Coyotes, California.

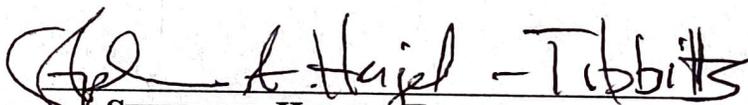

STEPHANIE HEIGEL-TIBBITTS

Exhibit A

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
 725 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060
 PHONE: (831) 427-4863
 FAX: (831) 427-4877
 WEB: WWW.COASTAL.CA.GOV

**Th14c**

Appeal Filed: 4/22/2019
 Action Deadline: 7/1/2019
 Staff: Brian O’Neill - SC
 Staff Report: 5/24/2019
 Hearing Date: 6/13/2019

**APPEAL STAFF REPORT: SUBSTANTIAL ISSUE
 DETERMINATION**

Appeal Number: A-3-SLO-19-0026

Applicant: David Tibbitts

Appellants: Commissioners Howell and Peskin

Local Decision: Approved by the San Luis Obispo County Planning Department Hearing Officer on March 15, 2019 (County Coastal Permit Number DRC2007-00114).

Project Location: On the blufftop inland of a sandy beach at 1210 Pacific Street in the unincorporated community of Cayucos, San Luis Obispo County (APN 064-227-006).

Project Description: Demolition of an existing 1,116-square-foot single-family residence and construction of a new 2,300-square-foot single-family residence, attached garage, decking, and related development on a blufftop lot fronted by riprap and a built-in private stairway to the beach.

Staff Recommendation: Substantial Issue Exists

Important Hearing Procedure Note: The Commission will not take testimony on this “substantial issue” recommendation unless at least three Commissioners request it. The Commission may ask questions of the Applicant, any aggrieved person, the Attorney General or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally (and at the discretion of the Chair)

limited to three minutes total per side. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which the Commission will take public testimony. (California Code of Regulations, Title 14, Sections 13115 and 13117.)

SUMMARY OF STAFF RECOMMENDATION

The County-approved project allows for the demolition of an existing 1,116-square-foot single-family residence and construction of a new two-story 2,300-square-foot single-family residence with new attached garage, decking, and related development in its place. The project is located on an ocean and beach fronting blufftop parcel within the unincorporated community of Cayucos in San Luis Obispo County just north of the City of Morro Bay. The residential site fronts on a stretch of sandy beach located between Cayucos State Beach and Morro Strand State Beach that is part of a very popular and unbroken six-mile stretch of public sandy beach area extending from the northern end of Cayucos all the way south to Morro Rock in Morro Bay. Like much of the Cayucos shoreline, the site is also fronted by an existing riprap revetment at the base of the bluff, with a private staircase leading from the residential backyard down to the sand through the revetment.

The appeal contends that the County's approval of the project raises questions of consistency with the San Luis Obispo County certified Local Coastal Program (LCP) and the Coastal Act's public access policies because: (1) the approved project includes a new residential structure that is protected by shoreline armoring, which is prohibited by the LCP; (2) even if the riprap were not prohibited by the LCP and was legally established, the armoring is not necessary to protect the new residence; and (3) the riprap is inconsistent with LCP and Coastal Act public access provisions.

With regard to the issue of shoreline development, the LCP's Estero Area Plan (EAP) that covers the Cayucos area expressly prohibits shoreline armoring to protect new development. Additionally, the EAP states that any development that alters 50 percent or more of an existing structure is not allowed unless the entire structure is brought into conformance with the LCP, which includes the prohibition on shoreline armoring, including even previously legally-established armoring be addressed in that context. Here, the County approved a complete demolition of the existing residential structure and construction of a new residence. Thus the project must conform to all LCP policies, and shoreline armoring to protect the new residence is therefore prohibited. Moreover, the County did not evaluate the legal status of the existing armoring (which available evidence suggests is unpermitted), as is required by the LCP, nor did the County evaluate opportunities to avoid such armoring's impacts on coastal resources, including through its removal, as is also required by the LCP. And here, as is required by the LCP, the new residence was deemed to be safe without the need for armoring.¹ Rather, the County did not address the LCP requirements that pertain to the riprap at all. Thus the County's

¹ The Applicant's geotechnical evaluation determined that the proposed development would be safe for an estimated 550 years without such armoring.

approval raises a substantial issue with respect to conformity with the shoreline development policies of the LCP.

With respect to public recreational access, the Coastal Act and LCP require public recreational access to and along California's coastline to be protected and enhanced, including requiring that public recreational access opportunities be maximized. The LCP also requires that the impacts of any existing armoring on coastal resources be evaluated, and that armoring associated with projects like this be addressed in a way to avoid ongoing coastal resource degradation. Again, the County did not address the LCP requirements that pertain to the riprap's impact on public recreational access. Rather, the County-approved project allows for armoring (that appears to be unpermitted) to remain and for it to protect the new house, even though such armoring is prohibited under the LCP and not needed to establish a safe setback and building site (as is also required by the LCP) per the Applicant's own analyses. The existing riprap likely has had, and continues to have, a variety of impacts on public recreational access, including: 1) occupying space on the shoreline/beach that would otherwise be available for public recreational access; 2) fixing the position of back of the beach on an eroding shoreline, which will result in the narrowing of the available shoreline/beach space over time, particularly as it is affected by sea level rise; and 3) preventing sand in the bluff material retained behind the armoring from contributing to the local shoreline sand supply. Thus the County's approval raises a substantial issue with respect to conformity with the public recreational access policies of the Coastal Act and the LCP.

In short, the County's approval authorizes a new residence to rely on an existing riprap revetment, which the LCP does not allow. In addition, the revetment likely results in significant negative impacts to public access and beach recreation that have not been identified, avoided/reduced, or mitigated through the County's approval, which the LCP also does not allow. The Applicant's project materials indicate that the revetment is not necessary to protect the new residence, and that the new residence would be safe for over five-and-a-half centuries without any armoring. For these reasons, staff believes that the County's approval raises substantial LCP conformance issues related to core Coastal Act and LCP coastal resource protection requirements, and staff recommends that the Commission find substantial issue and take jurisdiction over the CDP application for this 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 effect this recommendation are found on page 5 below.

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APPENDICES

Appendix A – Substantive File Documents

Appendix B – Staff Contact with Other Agencies and Groups

EXHIBITS

Exhibit 1 – Regional Location Map

Exhibit 2 – Aerial Photo of the Project Site

Exhibit 3 – County’s CDP Final Local Action Notice

Exhibit 4 – Appeal of County’s CDP Action

Exhibit 5 – Applicable Coastal Act and LCP Provisions

Exhibit 6 – Applicant’s Geological Coastal Bluff Evaluation Report

I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was 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-SLO-19-0026 raises no substantial issue with respect to the grounds on which the appeal has 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-SLO-19-0026 presents a substantial issue with respect to the grounds on which the appeal has 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.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT LOCATION

The County-approved project is located on an ocean-and-beach-fronting blufftop parcel at 1210 Pacific Avenue within the unincorporated community of Cayucos in San Luis Obispo County, just north of the City of Morro Bay. The residential site fronts a stretch of sandy beach located between Cayucos State Beach and Morro Strand State Beach that is part of a very popular and unbroken six-mile stretch of public sandy beach area extending from the northern end of Cayucos all the way south to Morro Rock in Morro Bay. Several public vertical accessways, situated between residential structures, provide access from Pacific Avenue to the beach, including a staircase on one parcel north, approximately 50 feet from the subject site. Like much of the Cayucos shoreline, the site is fronted by an existing riprap revetment. The riprap at the site also has a built-in private staircase leading from the backyard down to the sand. The residence to the north is also protected by riprap, but the residence to the south is protected by a natural rocky outcrop and does not appear to have any shoreline armoring.

See **Exhibit 1** for a location map and **Exhibit 2** for an aerial photo of the site.

B. PROJECT BACKGROUND AND HISTORY

The existing 1,116-square-foot dwelling currently located on the parcel was originally constructed in 1932. Air photos show that the house appears relatively unchanged in terms of its general configuration and orientation since that time, although available photographic evidence

suggests that a rear deck and patio area were constructed sometime in the 1990s. Neither the Commission nor the County have identified any CDPs associated with any house improvements since the time coastal permits have been required for development at this location starting in the early 1970s,² whether for the aforementioned deck and patio or any other development in that nearly 50-year time frame when CDPs were required. Thus, any such development at the site since February 1973, including the deck and patio, appears to be unpermitted.

Although the County did not analyze or investigate the legality of the existing riprap at the time of its approval, the Commission has researched its files for information regarding the permitting status of the rip rap in the time since the current appeal was filed. From that preliminary investigation, it appears that the Commission issued an emergency coastal development permit (ECDP) in 1983 for the temporary installation of riprap at this location (ECDP 4-83-155-G), and that the Commission also approved a follow-up CDP application later in 1983 to recognize the riprap that was installed under the ECDP (CDP Application 4-83-155).³ However, it also appears that the then property owners did not complete the prior to issuance CDP conditions and a violation case was opened (Violation Number V-4-86-069) because the armoring had already been constructed. The property owners at that time failed to comply with the prior to issuance conditions (including Special Condition 2, which required recordation of an “Offer to Dedicate” a lateral public access easement) within the two-year period when the Commission’s approval was still valid. Thus, the CDP likely expired in 1985. The existing riprap therefore appears to be unpermitted. In addition, available photographic evidence suggests that the riprap revetment may have been repaired and/or added to since 1983 without benefit of any CDPs. Thus, it appears from available evidence that the armoring and related developed at the base of the bluff and on the bluff face at the site is likely unpermitted and Commission enforcement staff is further investigating the permit history of the existing riprap.

C. SAN LUIS OBISPO COUNTY APPROVAL

On March 15, 2019 the San Luis Obispo County Planning Department Hearing Officer approved a CDP for the project. The County’s Final Local Action Notice was received in the Coastal Commission’s Central Coast District Office on April 9, 2019 (see **Exhibit 3**). The Coastal Commission’s ten-working-day appeal period for this action began on April 10, 2019 and concluded at 5pm on April 23, 2019. One valid appeal was received during the appeal period (see **Exhibit 4**).

D. PROJECT DESCRIPTION

The County-approved project allows for the demolition of the existing 1,116-square-foot single-family residence and related development, and construction of a new two-story 2,300-square-

² Proposition 20 was approved by California voters in November 1972, and introduced coastal permitting requirements in February 1973 that applied at this location. These were ultimately superseded by the Coastal Act in 1977. In short, development at this location has required CDPs since February 1, 1973.

³ The Commission has not yet been able to retrieve these files from State archives in Sacramento, and thus additional information on these permits that may be relevant is, as of the date of this staff report, unaccounted for. The characterization herein is from copies of materials found in Commission violation files associated with the site.

foot single-family residence with new attached garage, decking, and related development. The County's approval does not discuss or analyze the existing riprap or the range of any potential unpermitted development at the site. See pages 22-28 of **Exhibit 3** for the County-approved project plans.

E. 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; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP (see Coastal Act Sections 30603(a)(1)-(4)). 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 (per Coastal Act Section 30603(a)(5)). This project is appealable because it involves development that is located between the sea and the first public road paralleling the sea, is within 300 feet of the inland extent of a beach, and is within 300 feet of the seaward face of a coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct the *de novo* portion of the hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission considers the CDP *de novo* (upon making a determination of "substantial issue") and finds that the proposed development is in conformity with the certified LCP, the Commission may approve a CDP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) requires a specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea, and thus this additional finding would need to be made if the Commission were to approve a CDP for the proposed project following a *de novo* hearing.

The only persons qualified to testify before the Commission on the substantial issue question (should the Commission decide to hear public testimony on the substantial issue question) are the Applicants (or their representatives), persons who opposed the project and made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing (see California Code of Regulations, Title 14, (CCR) Sections 13115 and 13117). Any person may testify during the *de novo* CDP determination stage of an appeal.

F. SUMMARY OF APPEAL CONTENTIONS

The appeal contends that the County's approval of the project raises questions of consistency with the San Luis Obispo County certified Local Coastal Program (LCP) and the public access policies of the Coastal Act because: (1) the approved project includes a new residential structure that is protected by shoreline armoring, which is prohibited by the LCP; (2) the existing riprap revetment appears to not be legally established; (3) even if the riprap was not prohibited by the LCP and was legally established, the armoring is not necessary to protect the new residence; and (4) the riprap is inconsistent with LCP and Coastal Act public access provisions. See **Exhibit 4** for the full text of the appeal.

G. SUBSTANTIAL ISSUE DETERMINATION

Substantial Issue Background

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (see CCR Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors in making such determinations: (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 and with the public access policies of the Coastal Act; (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 interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. Even where the Commission chooses not to hear an appeal (by finding no substantial issue), appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate (pursuant to Code of Civil Procedure, Section 1094.5).

In this case, for the reasons discussed further below, the Commission determines that the development as approved by the County presents a substantial issue of LCP conformance.

1. Shoreline Development

The appeal raises concerns with regard to the project's consistency with the shoreline development provisions of the LCP, including with respect to the existing shoreline armoring that will remain as part of the project. See **Exhibit 5** for the LCP provisions cited in this section.

Chapter 7 of the LCP's Estero Area Plan (EAP) provides standards for all development within Cayucos and provides specific standards for shoreline development located on or adjacent to a beach or coastal bluff. EAP Policy 7.III.I.5 expressly prohibits shoreline armoring to protect any new development at any time, and requires property owners to record a deed restriction waiving any rights to any such armoring that may otherwise exist. The EAP also recognizes that there may be cases where such new development is proposed when armoring already exists fronting potential development sites, and provides direction where such armoring is legally established. In cases where armoring is not legally established and rather is unpermitted, such armoring represents a violation of the Coastal Act/LCP that must be resolved either through removal of the unpermitted development or through an after-the-fact permit approval. In either case, the

armoring is not allowed to be countenanced for purposes of establishing setbacks and safe building sites. If such existing armoring was legally established, the LCP requires an evaluation of modifications to the armoring in order to minimize or eliminate its ongoing coastal resource impacts, which necessarily must include the potential removal of the armoring. If not legally established, the LCP gives no status to the armoring and thus it must be removed or approved after-the-fact because it is not permitted and is a violation of the Coastal Act and the LCP. In short, the EAP recognizes that armoring results in coastal resource impacts, particularly to the beach here, and provides direction to eliminate such armoring over time as sites are developed and redeveloped.

On the latter point, the LCP's EAP was one of the first LCPs statewide to refine policies to address the question of when a project is no longer "repair and maintenance" but rather is "redevelopment" that requires the redeveloped project to be brought into LCP conformance, including with respect to eliminating armoring because the Coastal Act and the LCP do not allow such shoreline-altering development to protect such redevelopment. Specifically, EAP Policy 7.III.I.3.4 states that any development that alters 50 percent or more of an existing structure on a cumulative basis shall not be authorized unless the entire structure is brought into conformance with all policies and standards of the LCP, which includes the prohibition on shoreline armoring and the restriction-of-future-armoring requirement. When the Commission approved the Estero Area Plan Update in 2008, the Commission recognized that most of blufftop Cayucos was already developed with residential structures fronted by some type of armoring along the beach, a good portion of which appear to lack required permits and in many cases are actually on State Parks property, and that "the primary issue for Cayucos [with respect to EAP consistency with Coastal Act coastal hazards policies] is the redevelopment of blufftop properties" (see LCP Amendment SLO-MAJ-2-04 Part 2).⁴

Here, the County-approved project includes a complete demolition of the existing residential structure and related development and construction of an entirely new residence and related development. Thus the project is above the 50 percent redevelopment threshold (i.e., it is 100% alteration) and the new structure must be brought into conformance with all LCP provisions, including in relation to the existing armoring. Despite this LCP conformance requirement, the County's approval did not analyze whether allowing the existing shoreline armoring to remain on the project site is consistent with the LCP. As stated above, shoreline armoring is prohibited to protect new development, property owners are required to record a deed restriction to ensure that such armoring is not proposed or constructed, and owners are required to waive any right to such armoring that may exist. Thus, because the County's approval allows for new development to be protected by shoreline armoring, the County's approval raises a substantial LCP conformance issue with respect to shoreline development.

Moreover, as described above, the LCP requires an inquiry and evaluation of the permitting and property ownership status of any existing armoring as part of a CDP review for blufftop development such as this. Specifically, EAP Policy 7.III.I.3 includes detailed requirements for

⁴ In order to ensure EAP consistency with the Coastal Act's Chapter 3 hazards and coastal resource protection policies, the Commission identified a series of policy modifications related to the redevelopment question and armoring that were necessary for approval; the County accepted the Commission's suggested modifications to the EAP, and the Commission subsequently certified the LCP's EAP.

development on coastal bluffs, and further requirements for projects with existing legally established shoreline armoring. First, Section (a) of EAP Policy 7.III.I.3 requires that *any* application for such development – whether meeting redevelopment thresholds or not – must include a detailed coastal hazards analysis that includes “an alternatives analysis to avoid or minimize impacts to public access.” Second, Section (b) of this policy states that if it is determined that such armoring was legally established, two things are required: one, that such development be appropriately sited and designed to allow for 100 years of safety without reliance on the armoring (or any armoring); and two, that the required analysis identify what measures can be taken to address the LCP’s prohibition on armoring to protect new development (including redevelopment subject to the above-described 50% threshold), which necessarily includes opportunities for full armoring removal. Finally, Section (d) requires a survey “of all property lines and the mean high tide line by a licensed surveyor along with written evidence of full consent of any underlying land owner, including, but not limited to the County, State Parks, and State Lands.” This latter provision was established given that when the EAP Update was approved in 2008, there were many cases of armoring in Cayucos that were located on State Parks’ property.

In this case, the project did not include the EAP Policy 7.III.I.3-required evaluations, and the County did not otherwise address the existing armoring on the site in the manner required by the LCP. In the time since the appeal was filed, Commission staff has been able to determine that the armoring at this location is likely unpermitted and Commission enforcement staff is investigating this issue further.⁵ The County’s record includes no information on these important points. Similarly, the Applicant’s geotechnical evaluation (**Exhibit 6**) estimated “a conservative” average annual bluff retreat rate at this location of 0.54 inches per year without taking into account the existing riprap (i.e., just over half an inch per year without any armoring, meaning that the LCP required minimum setback of 25 feet would not be lost to erosion for over 550 years without the existing riprap being present), but the County’s approval does not address retention of the existing riprap, even though it is not even needed at this location, and the Applicant’s own analysis estimates over five-and-a-half centuries of safety without armoring. In addition, it remains unclear, absent a survey, whether the armoring is on State Parks’ or other public property or not. Thus, because the County approved the project without determining the legal status of the armoring, without evaluating armoring modification/removal options, and without identifying the property ownership underlying the armoring, all as required by the LCP, the County’s approval raises a substantial LCP conformance issue with respect to shoreline development.

On this point it is important to note that EAP Policy 7.III.I.3 requires an evaluation of armoring modifications to avoid ongoing coastal resource impacts. The Commission has consistently found that shoreline armoring devices, such as this riprap, generally result in adverse impacts to coastal resources, particularly to public recreational beach and shoreline access, including by: 1) occupying space on the shoreline/beach; 2) fixing the back beach, which will result in the narrowing of shoreline/beach space over time; and 3) preventing sand in the bluff material retained behind the armoring from contributing to the local shoreline sand supply. Thus, these

⁵ As indicated above, the riprap was apparently temporarily installed and conditionally permitted in 1983, but that CDP expired without conditions being fulfilled in a timely manner, and there are no other CDPs for the armoring (including any changes or other related development in the bluff face area) before or since 1983.

types of impacts and others cannot be fully eliminated, as required by the LCP, if armoring is allowed to persist as the County did in its action, particularly if unpermitted armoring that enjoys no CDP status (as is likely in this case) is allowed to persist. Further, the County-approved project did not analyze whether the existing armoring should or could be modified or removed in order to address LCP and CDP requirements, and to avoid the riprap's impacts (which were also not identified) as required. Finally, the Applicant's own analysis shows that the armoring is not necessary for site stability, and thus that the armoring could be completely removed without affecting project stability over time. Because the County's approval did not analyze armoring modifications/removal to avoid ongoing coastal resource impacts, as required by the LCP, the County's approval raises a substantial LCP conformance issue with respect to shoreline development.

In short, the County's approval authorizes a new residence to rely on an existing riprap revetment, which the LCP does not allow. In addition, the revetment likely results in significant negative impacts to public access and beach recreation that have not been identified, avoided/reduced, or mitigated, which the LCP also does not allow. The Applicant's project materials indicate that the revetment is not necessary to protect the new residence, and that the new residence would be safe for over five-and-a-half centuries without any armoring. For these reasons, the County's approval raises a substantial LCP conformance issue with respect to shoreline development.

2. Public Recreational Access

With regard to public recreational access, the appeal contends that the existing shoreline armoring interferes with lateral access across the beach and with public beach use. Relatedly, the appeal also states that the approval did not identify, evaluate, or mitigate for any potential impacts to public access.

With respect to public recreational access, the California Constitution and the Coastal Act mandate the protection and enhancement of public recreational access to and along California's coastline, including requirements that such public recreational access opportunities be maximized (Coastal Act Section 30210). Coastal Act Section 30210's direction to maximize public recreational access represents a different threshold than to simply provide or protect such access, and Section 30210 is therefore fundamentally different from other like provisions in this respect. It is not enough to simply provide public recreational access to and along the coast, and it is not enough to simply protect public recreational access; rather such public recreational access must also be *maximized*. This terminology distinguishes the Coastal Act and provides fundamental direction to projects along the California coast that raise public recreational access issues, such as this one. The County's LCP in EAP Policy 8.VI.b also reflects this fundamental principle, requiring maximum public recreational access and prohibiting interference with the public's right of such access, including to the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation (see **Exhibit 5** for applicable Coastal Act and LCP provisions).

In this case, the County-approved project would allow for the existing riprap (which was installed to protect the existing SFD and which is likely unpermitted) to persist indefinitely (see the above "Shoreline Development" findings, which are also incorporated into this Public Recreational Access finding verbatim). The County-approved project would replace that existing residential structure with a *new* structure, which, as discussed above, is not entitled to such

armoring under the LCP. Given its location, this riprap likely eliminates and interferes with public recreational beach access by covering beach access areas, retaining sand-generating materials that would otherwise make their way into the beach environment, and by fixing the back beach on an eroding shoreline subject to sea level rise that will result in loss of beach over time (i.e., the “coastal squeeze”), all of which is prohibited by the Coastal Act and the LCP at this location and for this fact set. The County’s approval thus raises a substantial LCP and Coastal Act conformance issue with respect to public recreational access.

3. The “Five Substantial Issue” Factors

When considering a local government’s CDP decision on a project that has been appealed to it, the Commission must first determine whether the decision on the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction “de novo” over the CDP application for such development. At this stage, the Commission has the discretion to find that the County’s approval of a CDP for the project does or does not raise a substantial issue of LCP conformance. The Commission has in the past considered the following five factors in its decision of whether the issues raised in a given case are “substantial”: the degree of factual and legal support for the local government’s decision; the extent and scope of the development as approved or denied by the County; the significance of the coastal resources affected by the decision; the precedential value of the County’s decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

In this case, these five factors, considered together, support a conclusion that the County’s approval of this project *does* raise a substantial issue of LCP conformance. In terms of factual and legal support, the County did not require or analyze the legal status of, nor the impact of, the existing riprap structure as required by the shoreline development provisions of the LCP, especially in light of the LCP’s *prohibition* on shoreline armoring to protect new development. This represents a significant lack of legal and factual support for its decision on this fundamental issue.

In terms of the extent and scope of development, while relatively speaking the scope of the proposed new development (replacement of an existing 1,116-square-foot single-family dwelling with a 2,300-square-foot single-family dwelling) may not be that significant in terms of residential development in general, the extent and scope of the development *are* significant when considering that the primary LCP issue here relates to retention of shoreline armoring that is not allowed by the LCP, and that adversely affects an irreplaceable public resource, namely the sandy beach at this location. Any approval of armoring development with such an outcome is significant in extent and scope.

Regarding the significance of coastal resources affected by the County’s approval, the coastal beach area resources implicated by the County’s approval are among the most important coastal resources protected under the LCP (and its EAP) and the Coastal Act. As stated above, sandy beach resources are irreplaceable public goods, and they are being lost due to the presence of armoring structures such as this, particularly in light of sea level rise.

In terms of precedence, the County’s approval of the project in this form could have a significant precedential impact on future County interpretations of its LCP with respect to shoreline

armoring and redevelopment, particularly considering that the County did not appropriately consider or apply these relevant policies, as is LCP-required.

Finally, allowing shoreline armoring to remain in order to protect new development when the LCP prohibits same (as does the Coastal Act), particularly when the LCP explicitly requires an evaluation of removal/modification options as it does here, raises issues of statewide significance as impacts to coastal resources resulting from shoreline armoring are among the most critical issues addressed by the Commission statewide in its protection of coastal resources. Taken together, the County-approved project does not adequately address Coastal Act and LCP coastal resource protection issues, and the five factors on the whole support a finding of substantial issue as to conformity with the certified LCP.

For the reasons stated herein, the Commission finds that Appeal Number A-3-SLO-19-0026 raises substantial LCP and Coastal Act conformance issues in terms of shoreline development and public recreational access. Therefore, the Commission finds that **a substantial issue** exists with respect to the County-approved project's conformance with the provisions of the certified San Luis Obispo County LCP and with the public access and recreation policies of the Coastal Act, and takes jurisdiction over the CDP application for the proposed project.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS⁶

- *Geological Coastal Bluff Evaluation 1210 Pacific Avenue, APN: 064-227-006 Cayucos Area, San Luis Obispo County, California, GeoSolutions, Inc. June 13, 2008.*
- *Review of Geologic Coastal Bluff Evaluation, Tibbitts Residence, Lot 13, Block19, Paso Robles Beach #1, 1210 Pacific Avenue (APN 064-227-006), Cayucos Area of San Luis Obispo County, California, Document No. 0812-124.REV, Landset Engineers, Inc. December 30, 2008.*
- *Response to Review Comments: Geologic Bluff Evaluation, 1210 Pacific Avenue, APN: 064-227-006, Cayucos Area, San Luis Obispo County, California, Project No. SL06635-3, Geosolutions, Inc. April 8, 2011.*
- *Soils Engineering Report 1210 Pacific Avenue, APN: 064-227-006, Cayucos Area, San Luis Obispo County, California, Project No. SL06635-4, Geosolutions, Inc. December 15, 2016.*

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- San Luis Obispo County Department of Planning and Building

⁶ These documents are available for review in the Commission's Central Coast District office in Santa Cruz.

Exhibit B

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



Th14c

A-3-SLO-19-0026 (TIBBITTS SFD)

JUNE 13, 2019 HEARING

EXHIBITS

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Exhibit 2 – Aerial Photo of the Project Site

Exhibit 3 – County’s CDP Final Local Action Notice

Exhibit 4 – Appeal of County’s CDP Action

Exhibit 5 – Applicable Coastal Act and LCP Provisions

Exhibit 6 – Applicant’s Geological Coastal Bluff Evaluation Report



COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING & BUILDING
Trevor Keith Director of Planning & Building

RECEIVED

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

FINAL LOCAL
ACTION NOTICE
REFERENCE # 3-SLO-19-0527
APPEAL PERIOD 4/10/19 - 4/23/19

March 26, 2019

JOHN MCDONALD
2813 SANTA BARBARA AVE.
CAYUCOS, CA 93430

SUBJECT: Notice of Final County Action, Minor Use Permit / Coastal Development Permit DRC2007-00114

Dear Sir/Madam,

LOCATED WITHIN COASTAL ZONE: YES

On **March 15, 2019**, the above-referenced application was approved by the **Planning Department Hearing Officer** based on the approved Findings, and subject to the approved Conditions, which are both enclosed for your records.

This action is appealable to the California Coastal Commission, pursuant to regulations contained in Coastal Act Section 30603 and the County Coastal Zone Land Use Ordinance 23.01.043. These regulations contain specific time limits to appeal, criteria, and procedures that must be followed to appeal this action. The appeal must be made directly to the California Coastal Commission. For further information on their appeal procedures, contact the Commission's Santa Cruz Office at (831) 427-4863.

County Coastal Zone Land Use Ordinance (CZLUO) Section 23.01.043 and applicable sections of the Coastal Act provide ten (10) working days for an appellant to appeal the County's Final Action. An appellant may include any of the following: an applicant, an aggrieved person as defined in CZLUO 23.01.043 and any two California Coastal Commissioners. This means the Applicant cannot commence development and the County cannot take any further administrative actions for the proposed development, including but not limited to, the request or issuance of a building permit, until the Coastal Commission Appeal period has expired without an appeal being filed and the County's notice of final action that it submitted to the Coastal Commission has been accepted by Commission staff as compliant with Title 14 CCR section 13571.

If you disagree with this action, pursuant to (County Real Property Ordinance Section 21.04.020 / County Land Use Ordinance Section 22.70.050 / County Coastal Zone Land Use Ordinance (CZLUO) Section 23.01.042), and in the manner described therein, you have the right to appeal this decision, or a portion of this decision, to the Board of Supervisors within 14 calendar days after the date of the action.

The appeal must be submitted to the Director of the Department of Planning and Building on the proper Department appeal form, as provided on the County website. The appeal form must be submitted with an original signature; a facsimile will not be accepted.

If the appeal is consistent with the standards set forth in CZLUO Section 23.01.043d, there is no fee to file an appeal. If the appeal is not consistent with CZLUO Section 23.01.043.d, a fee, set by the current fee schedule, will be required and must be submitted with the appeal form at time of filing. If the County requires that an appellant submit a fee to file an appeal, the action is directly appealable to the California Coastal Commission pursuant to the CZLUO Section 23.01.043, and in the manner contained therein, precluding the need to exhaust local administrative appeals.

Additionally, CZLUO Section 23.01.043 and applicable sections of the Coastal Act provide the California Coastal Commission 10 working days following the expiration of the County appeal period to appeal the County's Final Action. This means the Applicant cannot commence development and the County cannot take any further administrative actions for the proposed development, including but not limited to, the request or issuance of a building permit, until the County appeal period and the Coastal Commission Appeal period have expired without an appeal being filed, and the County's notice of final action that it submitted to the Coastal Commission has been accepted by Commission staff as compliant with Title 14 CCR Section 13571.

Please note that exhaustion of local appeals at the County level is almost always required prior to appealing the matter to the California Coastal Commission. Three exceptions apply to this requirement as provided in CZLUO Section 23.01.043b.(1)-(3).

If you have any questions regarding your project, please contact **Kerry Brown** at 1-805-781-5713.



Nicole Retana, Secretary
County of San Luis Obispo
Department of Planning & Building

CC: DAVID TIBBITTS
P.O. BOX 45411
JACKSON, WY 83001

**EXHIBIT A - FINDINGS
TIBBITTS (DRC2007-00114)**

CEQA Exemption

- A. The project qualifies for Categorical Exemptions (Class 1 and 3) pursuant to CEQA Guidelines Section 15301 and 15303 because the project is demolition of an existing residence and construction of a replacement residence.

Minor Use Permit

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan and Local Coastal Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan and Local Coastal Plan policies.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project (replacement residence) does not generate activity that presents a potential threat to the surrounding property and buildings. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the project (replacement residence) is similar to, and will not conflict with, the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on Pacific Street, a local road that is constructed to a level able to handle any additional traffic associated with the project.

Coastal Access

- G. The project site is not located between the first public road and the ocean. The project site is within an urban reserve line (Cayucos) and an existing coastal access point exists within 40' of the project site; therefore, the proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act.

Small Scale Neighborhood

- H. The proposed project meets the Community Small Scale Neighborhood Design standards and is therefore consistent with the character and intent of the Cayucos Community Small Scale Design Neighborhood.

**EXHIBIT B - CONDITIONS OF APPROVAL
TIBBITTS (DRC2007-00114)**

Approved Demolition and Development

1. This approval authorizes the following:
 - a. Demolition of an existing single-family residence;
 - b. A new two-story 2,300 square foot single family residence with attached garage and decking;
 - c. Height is limited to 15 feet (as measured from the centerline of Pacific).

Conditions required to be completed at the time of application for construction permits

Site Development

2. Submit revised site plan and floor plans to the Department of Planning and Building for review and approval. The revised plans shall show 30% (or less) of the upper floor wall aligning with the lower floor wall (Community Small Scale Design Neighborhood standard D3b) and development shall be consistent with this revised and approved plan.
3. The applicant shall provide details on any proposed exterior lighting, if applicable. The details shall include the height, location, and intensity of all exterior lighting. All lighting fixtures shall be shielded so that neither the lamp or the related reflector interior surface is visible from adjacent properties. Light hoods shall be dark colored.
4. The applicant shall submit a landscape plan that incorporates landscaping materials that help reduce the scale of the proposed residence

Fire Safety

5. All plans submitted to the Department of Planning and Building shall meet the fire and life safety requirements of the California Fire Code.

Services

6. The applicant shall provide a letter from Cayucos Beach Mutual Water Company stating they are willing and able to service the property.
7. The applicant shall provide a letter from Cayucos Sanitary District stating they are willing and able to service the property.

Access

8. **At the time of application for construction permits**, the applicant shall submit an encroachment permit application and plans to the Department of Public Works to secure an Encroachment Permit and post a cash damage bond to install improvements within the public right-of-way in accordance with County Public Improvement Standards. The plan is to include, as applicable:
 - a. Construct new rural road driveway approach to Pacific Ave in accordance with B-1a driveway and A-5 sight distance standards.
 - b. Utility plan, showing all existing utilities and installation of all new utilities to serve the site.

- c. Traffic control plan for construction in accordance with the California Manual on Uniform Traffic Control Devices (CA-MUTCD).
9. **At the time of application for construction permits**, the applicant shall submit complete drainage plans for review and approval in accordance with Section 22.52.110 (Drainage) or 23.05.040 (Drainage) of the Land Use Ordinance.
10. **At the time of application for construction permits**, the applicant shall submit complete erosion and sedimentation control plan for review and approval in accordance with 22.52.120.
11. **At the time of application for construction permits**, the applicant shall demonstrate that the project construction plans are in conformance with their Stormwater Control Plan.

Stormwater Control Plan (SWCP)

12. **At the time of application for construction permits**, the applicant shall demonstrate whether the project is subject post-construction stormwater requirements by submitting a Stormwater Control Plan application.
 - a. If required, the applicant must submit a Stormwater Control Plan (SWCP) prepared by an appropriately licensed professional to the County for review and approval. Applicants must utilize the County's latest SWCP template.
 - b. If applicable, the applicant shall submit a draft stormwater operations and maintenance plan for review by the County. The operations and maintenance plan may be incorporated into existing or proposed CC&Rs or drafted as an Agreement.
 - c. If applicable, following approval by the County, the applicant shall record with the County Clerk the stormwater operations and maintenance plan to document ongoing and permanent storm drainage control, management, treatment, inspection and reporting.
 - d. If applicable, the applicant shall submit a draft General Notice to document the location and type of control measures that were installed to mitigate Performance Requirement #2. Following approval by the County, the applicant shall record the General Notice with the County Clerk. The recorded control measures shall remain in good working order in perpetuity.
13. **At the time of submittal of the improvement plans or construction permits**, if necessary, the applicant shall submit a draft Stormwater Operations and Maintenance Plan for all structural post-construction stormwater treatment or retention facilities and it must be provided for review.

Conditions to be completed prior to issuance of a construction permit

14. **Prior to approval of the improvement plans or construction permits if necessary**, the approved Operations and Maintenance Plan may be recorded as an element of the Codes, Covenants and Restrictions, or as an Agreement with the County.

Fees

15. **Prior to issuance of a construction permit**, the applicant shall pay all applicable school and public facilities fees.

Lateral Access Dedication

16. **Prior to issuance of construction permits**, the applicant shall execute and record an offer of dedication for public access along the shoreline. The offer or dedication shall provide for lateral access of twenty-five (25) feet of dry sandy beach along the shore to be available at all times during the year, or from the mean high tide to the toe of the bluff where topography limits the dry sandy beach to less than 25 feet as well as room for any improvement requirements required by Coastal Zone Land Use Ordinance Section 23.04.420 - Coastal Access. The offer shall be in a form acceptable to County Counsel, and shall be approved by the Planning Director and the Executive Director the California Coastal Commission.

Liability

17. **Prior to issuance of any grading or construction permits**, the property owner shall execute and record a deed restriction which acknowledges and assumes the risks of wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.

Conditions to be completed during project construction

Building Height

18. The maximum height of the residence is 15 feet as measured from the center line of Pacific Avenue at a point midway between the two side property lines projected to the street center line.
 - a. **Prior to any site disturbance**, a licensed surveyor or civil engineer shall stake the lot corners, building corners, and establish average natural grade and set a reference point (benchmark).
 - b. **Prior to approval of the foundation inspection**, the benchmark shall be inspected by a building inspector prior to pouring footings or retaining walls, as an added precaution.
 - c. **Prior to approval of the roof nailing inspection**, the applicant shall provide the building inspector with documentation that gives the height reference, the allowable height and the actual height of the structure. This certification shall be prepared by a licensed surveyor or civil engineer.

Conditions to be completed prior to occupancy or final building inspection /establishment of the use

Fire Safety

19. The applicant shall obtain final inspection and approval from County Fire / CalFire of all required fire/life safety measures.

Access

20. **Prior to occupancy**, all work in the public right-of-way must be constructed or reconstructed to the satisfaction of the Public Works Inspector and in accordance with the County Public Improvement Standards; the project conditions of approval, including any related land use permit conditions; and the approved improvement plans.

Landscaping

21. Landscaping in accordance with the approved landscaping plan shall be installed or bonded for before final building inspection. If bonded for, landscaping shall be installed within 60 days after final building inspection and thereafter maintained in a viable condition in perpetuity.

Development Review Inspection

22. The applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.

On-going conditions of approval (valid for the life of the project)

23. This land use permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050 or the land use permit is considered vested. This land use permit is considered to be vested once a construction permit has been issued and substantial site work has been completed. Substantial site work is defined by Land Use Ordinance Section 23.02.042 as site work progressed beyond grading and completion of structural foundations; and construction is occurring above grade.
24. All conditions of this approval shall be strictly adhered to, within the time frames specified, and in an on-going manner for the life of the project. Failure to comply with these conditions of approval may result in an immediate enforcement action by the Department of Planning and Building. If it is determined that violation(s) of these conditions of approval have occurred, or are occurring, this approval may be revoked pursuant to Section 23.10.160 of the Land Use Ordinance.



**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT**

Tentative Notice of Action

Promoting the wise use of land

Helping build great communities

MEETING DATE March 15, 2019	CONTACT/PHONE Kerry Brown, Project Manager	APPLICANT Dave Tibbitts	FILE NO. DRC2007-00114
LOCAL EFFECTIVE DATE March 29, 2019	805-781-5713		
APPROX FINAL EFFECTIVE DATE April 19, 2019	kbrown@co.slo.ca.us		
SUBJECT A request by Dave Tibbitts for a Minor Use Permit/Coastal Development Permit (DRC2007-00114) to allow the demolition of an existing single-family residence and construction of a new two-story single-family residence with attached garage and decking, for a total gross structural area of 3,482 square feet. The project will result in the disturbance of approximately 3,500 square feet of an approximately 4,480-square-foot parcel. The proposed project is within the Residential Single-Family land use category, within the Small-Scale Design Neighborhood, and is located at 1210 Pacific Street, on the west side of Pacific Street, in the community of Cayucos. The site is in the Estero Planning area.			
RECOMMENDED ACTION Approve Minor Use Permit/ Coastal Development Permit DRC2007-00114 based on the findings listed in Exhibit A and the conditions listed in Exhibit B.			
ENVIRONMENTAL DETERMINATION Class 1 and 3 Categorical Exemptions (Sections 15301 and 15303) are proposed for this project.			
LAND USE CATEGORY Residential Single Family	COMBINING DESIGNATION Local Coastal Plan Area, Residential Single Family, Small Scale Neighborhood	ASSESSOR PARCEL NUMBER 064-227-006	SUPERVISOR DISTRICT(S) 2
PLANNING AREA STANDARDS: Small Scale Neighborhood <i>Does the project meet applicable Planning Area Standards: Yes - see discussion</i>			
LAND USE ORDINANCE STANDARDS: Local Coastal Plan Area <i>Does the project conform to the Land Use Ordinance Standards: Yes - see discussion</i>			
FINAL ACTION This tentative decision will become the final action on the project, unless the tentative decision is changed as a result of information obtained at the administrative hearing or is appealed to the County Board of Supervisors pursuant Section 23.01.042 of the Coastal Zone Land Use Ordinance; effective on the 10th working day after the receipt of the final action by the California Coastal Commission. The tentative decision will be transferred to the Coastal Commission following the required 14-calendar day local appeal period after the administrative hearing. The applicant is encouraged to call the Central Coast District Office of the Coastal Commission in Santa Cruz at (831) 427-4863 to verify the date of final action. The County will not issue any construction permits prior to the end of the Coastal Commission process.			
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER γ SAN LUIS OBISPO γ CALIFORNIA 93408 γ (805) 781-5600 γ FAX: (805) 781-1242			

EXISTING USES: Single family residence	
SURROUNDING LAND USE CATEGORIES AND USES: <i>North:</i> Residential Single Family/ residences <i>East:</i> Residential Single Family/ residences <i>South:</i> Residential Single Family/ residences <i>West:</i> Recreation / Pacific Ocean	
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Public Works, Cayucos Fire Department, Cayucos Sanitary District, Cayucos Beach Mutual Water Company, Cayucos Citizens Advisory Council, and the California Coastal Commission.	
TOPOGRAPHY: Level to gently rolling	VEGETATION: Grasses and ornamentals
PROPOSED SERVICES: Water supply: Community system Sewage Disposal: Community sewage disposal system Fire Protection: County Fire / CalFire	ACCEPTANCE DATE: January 31, 2019

DISCUSSION

The existing residence was built in 1932. The applicant is proposing to demolish the existing single-family residence and construct a new two-story 3,482 square foot single family residence with attached garage and decking. The project will result in the disturbance of approximately 3,500 square feet of a 4,480-square foot parcel. The proposed project is within the Residential Single-Family land use category, within the Small-Scale Design Neighborhood, and is located at 1210 Pacific Street, in the community of Cayucos.

A Minor Use Permit / Coastal Development Permit is required because the site is within 300 feet of the beach and located between the first public road and the ocean.

PLANNING AREA STANDARDS

I. Shoreline Development

New Development or expansion of existing uses proposed to be located on or adjacent to a beach or coastal bluff are subject to the following standards:

Application Content:

An analysis of beach erosion, wave run-up, inundation and flood hazards prepared by a licensed civil engineer with expertise in coastal engineering and a slope stability analysis, prepared by a licensed Certified Engineering Geologist and/or Geotechnical Engineer or Registered Civil Engineer with expertise in soils, in accordance with the procedures detailed by Appendix G of the Estero Area Plan. The report shall include an alternatives analysis to avoid or minimize impacts to public access.

On lots with a legally established shoreline protective device, the analysis shall describe the condition of the existing seawall; identify any impacts it may be having on public access and recreation, scenic views, sand supplies, and other coastal resources; and evaluate opportunities to modify or replace the existing armoring device in a manner that would eliminate or reduce these impacts. The analysis shall also evaluate whether the development, as proposed or modified, could be safely established on the property for a one-hundred-year period without a shoreline protective device.

Measurements for the form, mass, scale, and roofing and yard features (such as fencing). To the maximum extent feasible, new development shall be compatible with the character of the surrounding neighborhood.

Surveyed location of all property lines and the mean high tide line by a licensed surveyor along with written evidence of full consent of any underlying land owner, including, but not limited to the County, State Parks, and State Lands. If application materials indicate that development may impact or encroach on tidelands or public trust lands, the County shall consult with Coastal Commission staff regarding the potential need for a Coastal Development Permit from the Coastal Commission.

A preliminary drainage, erosion, and sedimentation plan which demonstrates that no stockpiling of dirt or construction materials will occur on the beach; erosion, runoff, and sedimentation measures to be implemented at the end of each day's work; all construction debris will be removed from the beach daily and at the completion of development; and no machinery will be allowed in the intertidal zone. If there is no feasible way to keep machinery out of the intertidal zone, authorization from the Coastal Commission is required.

Bluff Setbacks. The bluff setback is to be determined by the engineering geology analysis required in I.1.a. above adequate to withstand bluff erosion and wave action for a period of 100 years. In no case shall bluff setbacks be less than 25 feet. On parcels with legally established shoreline protective devices, the setback distance may account for the additional stability provided by the permitted seawall, based on its existing design, condition, and routine repair and maintenance that maintain the seawall's approved design life. Expansion and/or other alteration to the seawall shall not be factored into setback calculations.

Seawall Prohibition. Shoreline and bluff protection structures shall not be permitted to protect new development. All permits for development on blufftop or shoreline lots that do not have a legally established shoreline protection structure shall be conditioned to require that prior to issuance of any grading or construction permits, the property owner record a deed restriction against the property that ensures that no shoreline protection structure shall be proposed or constructed to protect the development, and which expressly waives any future right to construct such devices that may exist pursuant to Public Resources Code Section 30235 and the San Luis Obispo County certified LCP.

Liability. As a condition of approval of development on a beach or shoreline which is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes these risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.

Staff comments: A Geologic Coastal Bluff Evaluation was prepared by GeoSolutions, Inc. (June 13, 2008 and April 2011) and reviewed by LandSet Engineers, Inc. (December 2008 and May 2011). LandSet determined that the project engineering constraints had been adequately characterized and concurred with the recommendations and conclusions of the report. The new residence will be set back 25 feet from the top of bluff (adequate to withstand bluff erosion and wave action for a period of 100 years). The project is compatible with the surrounding character

as it is consistent with the Cayucos Community Small Scale Neighborhood Design standards. The proposed development meets these requirements.

Land Divisions and Land Use Permits: Application Content.

All applications for new land divisions and land use permits for new development shall be accompanied by letters from the applicable water purveyor and the Cayucos Sanitary District stating their intent to serve the proposed project.

Staff comments: The proposed project complies with this standard because the existing residence currently has water service and the proposed project is conditioned to obtain confirmation of continued service at the time of construction permit application.

Building Permits

All applications for building permits approval within the community of Cayucos are to be accompanied by a letter or other verification from the Cayucos Sanitary District indicating that the proposed project has received sewer connection approval.

Staff comments: The proposed project is currently served by Cayucos Sanitary District and is conditioned to obtain clearance for the new residence at the time of construction permit application and will comply with this standard.

RESIDENTIAL SINGLE FAMILY:
Community Small Scale Design Neighborhoods

The following table outlines the design standards for developments in Community Small Scale Design Neighborhoods and that pertain to this project:

PROJECT REVIEW	ALLOWABLE	PROPOSED	STATUS
HEIGHT	15'	15'	OK
ROOF PITCH	Not required (less than 18')	Not required (less than 18")	OK
LOWER STORY WALL HEIGHT	12'	11'	OK
GSA	3,500	3,482	OK
SECOND STORY SQUARE FOOTAGE	60% of Lower Floor	53% of Lower Floor (1188 of 2230)	OK
DECK RAIL HEIGHT	36 Inches (42" per CBC 2016)	42 inches	OK
PARKING	2	2	OK
GARAGE SIZE	20' (L) x 10' (W)	26" x 31'6"	OK
DRIVEWAY DIMENSIONS	18' (W) max	18'	OK
GROUND FLOOR SETBACKS			
FRONT	0' (20' if parking on driveway)	2'6"	OK
REAR	10'	25'	OK
SIDES	4'	4'	OK
UPPER STORY SETBACKS			

FRONT	3' from lower wall	35' 8" from lower wall	OK
SIDE	2' 6" from lower wall	2' 6" from lower wall	OK
SIDE WALL ALIGNMENT	30% may align with lower wall, when located in the rear 2/3 of the structure	37%*	OK (conditions of approval require revised plans to reduce alignment to maximum 30%)

Staff comments: California Building Code 2016 (CBC) requires minimum of 42-inches of deck rail height. The project is conditioned to reduce the upper story wall alignment to 30%. With this condition, the proposed project meets the Community Small Scale Neighborhood Design standards.

COASTAL ZONE LAND USE ORDINANCE STANDARDS:

Section 23.07.120 - Local Coastal Program

The project site is located within the California Coastal Zone as determined by the California Coastal Act of 1976 and is subject to the provisions of the Local Coastal Plan.

Section 23.07.080 – Geologic Study Area

All land use permit applications for projects located within a Geologic Study Area (except those exempted by Section 23.07.082) shall be accompanied by a report prepared by a certified engineering geologist and/or registered civil engineer (as to soils engineering), as appropriate.

Staff comments: The proposed project complies with this standard, a geological report was prepared for the project (GeoSolutions, June 13, 2008 and April 2011). The geologic report found that the site is geologically suitable for the proposed development. The geologic report determined the bluff setback to be 25 feet (adequate to withstand bluff erosion and wave action for a period of 100 years).

COASTAL PLAN POLICIES:

Public Works

Policy 1: Availability of Service Capacity.

New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable.

Staff comments: The applicant has demonstrated that adequate public service capacities are available to serve the proposed project because services already exist for the existing residence and will serve letters are required.

Coastal Watersheds

Policy 7: Siting of new development.

Grading for the purpose of creating a site for a structure or other development shall be limited to slopes of less than 20 percent slope.

Staff comments: The proposed project is consistent with this policy because the replacement residence will be located on an existing lot of record in the Residential Single-Family category on a slope less than 20 percent.

Policy 8: Timing of new construction.

Land clearing and grading shall be avoided during the rainy season if there is a potential for serious erosion and sedimentation problems. All slope and erosion control measures should be in place before the start of the rainy season. Soil exposure should be kept to the smallest area and the shortest feasible period.

Staff comments: The proposed project is consistent with this policy because the project is required to have an erosion and sedimentation control plan and all slope and erosion control measures will be in place before the start of the rainy season.

Policy 10: Drainage Provisions.

Site design shall ensure that drainage does not increase erosion. This may be achieved either through on-site drainage retention, or conveyance to storm drains or suitable watercourses.

Staff comments: The proposed project is consistent with this policy because the project is required to have a drainage plan that shows the construction of the replacement residence will not increase erosion or runoff

Visual and Scenic Resources:

Policy 6: Special Communities and Small-Scale Neighborhoods

Within the urbanized areas defined as small-scale neighborhoods or special communities, new development shall be designed and sited to complement and be visually compatible with existing characteristics of the community which may include concerns for the scale of new structures, compatibility with unique or distinguished architectural historical style, or natural features that add to the overall attractiveness of the community.

Staff comments: The proposed project is consistent with this policy because the development has been designed and sited to complement and be visually compatible with existing characteristics of the community.

Policy 7: Preservation of Trees and Native Vegetation

The location and design of new development shall minimize the need for tree removal. When trees must be removed to accommodate new development or because they are determined to be a safety hazard, the site is to be replanted with similar species or other species which are reflective of the community character.

Staff comments: The proposed project is consistent with this policy because no native trees are proposed for removal.

Does the project meet applicable Coastal Plan Policies: Yes, as conditioned

COMMUNITY ADVISORY GROUP COMMENTS: The Land Use Committee of the Cayucos Citizens' Advisory Council reviewed the proposed project and recommended approval.

AGENCY REVIEW:

Public Works – Driveway approach to be built to County standards for B-1, compliance with 5-b driveway sight distance for vehicles backing out into Pacific Ave. Regulated project for Stormwater management.

Cayucos Sanitary District – No response

Cayucos Beach Mutual Water Company – No response

California Coastal Commission – No response

LEGAL LOT STATUS:

The existing lot was legally created by a recorded map at a time when that was a legal method of creating lots.

Staff report prepared by Kerry Brown and reviewed by Terry Wahler.

**DRC2007-00114 TIBBITTS
EXHIBIT A - FINDINGS**

CEQA Exemption

- A. The project qualifies for Categorical Exemptions (Class 1 and 3) pursuant to CEQA Guidelines Section 15301 and 15303 because the project is demolition of an existing residence and construction of a replacement residence.

Minor Use Permit

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan and Local Coastal Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan and Local Coastal Plan policies.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project (replacement residence) does not generate activity that presents a potential threat to the surrounding property and buildings. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the project (replacement residence) is similar to, and will not conflict with, the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on Pacific Street, a local road that is constructed to a level able to handle any additional traffic associated with the project.

Coastal Access

- G. The project site is not located between the first public road and the ocean. The project site is within an urban reserve line (Cayucos) and an existing coastal access point exists within 40' of the project site; therefore, the proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act.

Small Scale Neighborhood

- H. The proposed project meets the Community Small Scale Neighborhood Design standards and is therefore consistent with the character and intent of the Cayucos Community Small Scale Design Neighborhood.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
 725 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060-4508
 VOICE (831) 427-4863 FAX (831) 427-4877

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioners Peskin & Howell

Mailing Address: 45 Fremont St., Ste. 2000

City:

Zip Code:

Phone:

San Francisco

94105

(415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of San Luis Obispo Department of Planning & Building

2. Brief description of development being appealed:

The demolition of an existing single-family residence and construction of a new two-story single-family residence with attached garage and decking, for a total gross structural area of 3,482 square feet. The project will result in the disturbance of approximately 3,500 square feet of an approximately 4,480-square-foot parcel.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

1210 Pacific Street, in the community of Cayucos.

4. Description of decision being appealed (check one.):

- Approval; no special conditions
 Approval with special conditions:
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-19-0026
 DATE FILED: 4/22/2019
 DISTRICT: Central Coast

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: March 15, 2019

7. Local government's file number (if any): DRC2007-00114

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Dave Tibbitts
PO BOX 45411
Jackson, WY 83001

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) John McDonald
2813 Santa Barbara Ave.
Cayucos, CA 93430

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

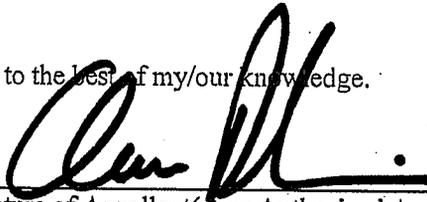
- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

See attached pages

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Date: _____

4-18-19

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize _____

to act as my/our representative and to bind me/us in all matters concerning this appeal.

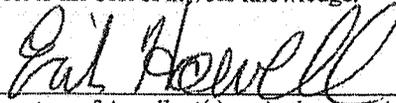
Signature of Appellant(s)

Date: _____

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Date: April 22, 2019

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

_____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

Appeal Contentions: San Luis Obispo County CDP DRC2007-00114 (Tibbitts) approval

On March 15, 2019 San Luis Obispo County approved a coastal development permit (CDP) for the demolition of an existing single-family residence and construction of a new 2,300 square-foot single-family residence, attached garage, and decking on a blufftop lot located at 1210 Pacific Street in Cayucos fronted by riprap (and a built-in private stairway) along Cayucos State Beach, a popular public sandy beach that is located directly adjacent to the project site. Although photographic evidence suggests that some riprap at this location may have been present prior to the Coastal Act, it appears that restacking/augmentation of the riprap has periodically occurred over the last 40+ years without any CDPs, and it appears that some or all of the riprap may be located on California Department of Parks and Recreation's Cayucos State Beach property. The County's approval raises issues of consistency with County Local Coastal Program (LCP) policies related to shoreline armoring, public access, and related beach area coastal resources.

With regard to shoreline armoring, Chapter 7.III.I of the LCP's Estero Area Plan (EAP) guides all shoreline development within Cayucos. EAP Policy 7.III.I.5 expressly prohibits shoreline armoring to protect new development, and requires property owners to record a deed restriction to ensure no future armoring will be proposed or constructed on the site and expressly waiving any right to such armoring. In addition, EAP Policy 4.3.6.F.4 states that any development that alters 50 percent or more of an existing structure requires that the entire structure be brought into conformance with all policies and standards of the LCP, which includes the prohibition on shoreline armoring and restriction of future armoring requirement. Here, the entire existing structure will be demolished and an entirely new structure will be constructed, which is above the 50 percent alteration trigger that requires conformance with the prohibition on shoreline armoring and restriction of future armoring requirement. In other words, because the project constitutes new development, the LCP prohibits shoreline armoring to protect the new structure and the existing riprap must be removed. However, the County's approval failed to require removal of the existing riprap and did not require a deed restriction to ensure no future armoring will be constructed as required by the LCP. Moreover, the County's approval references a Geological Coastal Bluff Report that was prepared for the project, which explicitly states that the existing riprap should be repaired and restacked as necessary, which appears to be a part of the approved project. Because the project allows for shoreline armoring (and what appears to be unpermitted armoring at that) to protect new development, including apparently repair of such armoring in the future moving forward, the County's approval raises questions as to the project's consistency with the LCP's shoreline armoring policies.

Additionally, EAP Policy 7.III.I.3 includes requirements for development on coastal bluffs with legally established shoreline armoring. Even though it is unclear whether all of the existing riprap is legally permitted (and, as stated above, all of the riprap should be removed under the LCP because shoreline armoring is prohibited for new development), the County's approval also raises issues of consistency with these requirements. First, EAP Policy 7.III.I.3.a requires that a detailed coastal hazards analysis be completed that includes "an alternatives analysis to avoid or minimize impacts to public access." Here, the Geological Coastal Bluff Report did not analyze potential alternatives to allowing the existing riprap to remain, including removal of the riprap and restoration of the natural bluff and beach, even though the report concluded that the proposed new structure will be safe from coastal hazards for 100 years with or without the riprap. Second, EAP Policy 7.III.I.3.b requires the coastal hazards analysis to identify whether the armoring will have any impacts to "public access and recreation, scenic views, sand supplies,

Appeal Contentions: San Luis Obispo County CDP DRC2007-00114 (Tibbitts) approval

and other coastal resources; and evaluate opportunities to modify or replace the existing armoring device in a manner that would eliminate or reduce these impacts.” Here, the report did not evaluate, analyze, or even mention any coastal resources that may be impacted by retaining the existing riprap moving forward. Because the impacts to public access, recreation, scenic resources, and sand supply were not identified, the County’s approval did not include any mitigation for, or reduction of, any such potential impacts as required by the LCP. Finally, EAP Policy 7.III.1.3.d requires a survey “of all property lines and the mean high tide line by a licensed surveyor along with written evidence of full consent of any underlying land owner, including, but not limited to the County, State Parks, and State Lands.” The County has stated that no such survey for this property was completed as required by the LCP and that the County does not know whether the existing riprap is located on the applicant’s property or on the California Department of Parks and Recreation’s Cayucos State Beach property, or some combination thereof. Because the project did not evaluate or mitigate, including modification or removal, for the potential impacts of the existing armoring and failed to determine whether the private armoring is located on public property, the County’s approval raises questions as to the project’s consistency with the LCP’s shoreline armoring and related coastal resource policies.

Finally, with regard to public access, EAP Policy 8.VI.b requires maximum public access and prohibits interference with the public’s right of access to the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Additionally, because the development is between the sea and the first public road, the public access and recreation policies of the Coastal Act are also applicable to the project, which also protect beach access and related coastal resources. In this case, the project site is located directly adjacent to (and potentially on, in relation to the riprap) Cayucos State Beach, a very popular and heavily used public access and recreation destination, and is within 50 feet of a public access beach staircase. As noted above, the County’s approval did not identify, evaluate, or mitigate for any potential impacts to public access (or sand supply or other coastal resources) associated with the retention of the existing riprap moving forward, nor did the approval evaluate whether the private armoring device is actually located on and preventing the public from accessing an area of public beach. Thus the County’s approval raises questions of consistency with the public access and recreation policies of both the LCP and the Coastal Act.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CALIFORNIA 95060-4508
(831) 427-4863 FAX (831) 427-4877

WWW.COASTAL.CA.GOV

**COMMISSION NOTIFICATION OF APPEAL**

April 22, 2019

To: Trevor Keith, Director
County of San Luis Obispo Department of Planning and Building
976 Osos St., Room 300
San Luis Obispo, CA 93408

From: Susan Craig, Central Coast District Manager

Re: **Commission Appeal No. A-3-SLO-19-0026**

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to the Public Resources Code Section 30623.

LOCAL PERMIT #: **DRC2007-00114**

APPLICANT: **Attn: David Tibbitts**

DESCRIPTION: Demolition of an existing single-family residence and construction of a new two-story single-family residence with attached garage and decking, for a total gross structural area of 3,482 square feet. The project will result in the disturbance of approximately 3,500 square feet of an approximately 4,480-square-foot parcel. The proposed project is within the Residential Single-Family land use category, within the Small-Scale Design Neighborhood and is located at 1210 Pacific Street, in the community of Cayucos.

LOCATION: 1210 Pacific St, Cayucos, CA (APN: 064-227-006)

LOCAL DECISION: Approval with Special Conditions

APPELLANT(S): California Coastal Commission, California Coastal Commission

DATE APPEAL FILED: 04/22/2019

The Commission appeal number assigned to this appeal is A-3-SLO-19-0026. The Commission hearing date has not been scheduled at this time. Within 5 working days of receipt of this Commission **Exhibit 4** notification

COMMISSION NOTIFICATION OF APPEAL

of Appeal, copies of all relevant documents and materials used in the San Luis Obispo County's consideration of this coastal development permit must be delivered to the Central Coast District Office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Susan Craig at the Central Coast District Office.

cc: California Coastal Commission, Attn: Erik Howell
David Tibbitts
California Coastal Commission, Attn: Aaron Peskin
John McDonald

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877



MEMORANDUM

TO: Persons whose City or County Development Permits Have Been Appealed to the Coastal Commission
FROM: Coastal Commission
RE: Notice Concerning Important Disclosure Requirements

On January 1, 1993, a new California law required that all persons who apply to the Coastal Commission for a coastal development permit must provide to the Commission "the names and addresses of all persons who, for compensation, will be communicating with the Commission or Commission Staff on their behalf". (Public Resources Code section 30319.) As of January 1, 1994, the law also required that applicants disclose the same information with respect to persons who will communicate, for compensation, on behalf of their business partners. The law also applies to persons whose permits have been appealed to the Coastal Commission. The law provides that failure to comply with the disclosure requirement prior to the time that a communication occurs is a misdemeanor that is punishable by a fine or imprisonment. Additionally, a violation may lead to denial of the permit.

In order to implement this requirement, you are required to do two things. The first is that you must fill in the enclosed form and submit it to the appropriate Coastal Commission area office as soon as possible. Please list all representatives who will communicate on your behalf or on the behalf of your business partners for compensation with the Commission or the staff. This could include a wide variety of people such as lawyers, architects, biologists, engineers, etc.

Second, if you determine after you have submitted the enclosed form that one or more people will be communicating on your behalf or on behalf of your business partners for compensation who were not listed on the completed form, you must provide a list in writing of those people and their addresses to the Coastal Commission area office. The list must be received before the communication occurs.

List of Persons Who Will Communicate on Behalf of Persons Whose Permits Have Been Appealed To the Coastal Commission

Name of Person Whose Permit Has Been Appealed:
Project and Location:

David Tibbitts
PO BOX 45411
JACKSON, WY 83001

Commission Appeal No. A-3-SLO-19-0026

Persons who will Communicate for Compensation on Behalf of Applicant or Applicant's Business Partners with Commission or Staff:

Names	Addresses

Signature of Permit Applicant

Date

Exhibit C

Appeal Information Sheet

Page 2

5. Approval or denial of development constituting a major public works project (including a publicly financed recreational facility and/or a special district development) or a major energy facility.³

Who can appeal?

The applicant for the CDP or any “aggrieved person” may submit an appeal to the Commission provided they have exhausted all local appeals. An “aggrieved person” generally means any person who participated in the local CDP application and decision making process (e.g., submitted comments, testified at hearings, etc.), whether directly or through a representative, or who for good cause was unable to do so (e.g., a person who did not participate because they were not properly noticed).

To exhaust local appeals, a potential applicant or aggrieved person appellant must pursue appeals through all of the local appellate processes for CDP decisions specified in the certified LCP (e.g., appeal of Zoning Administrator CDP decisions to the Planning Commission, and appeal of Planning Commission decisions to the City Council/Board of Supervisors). A potential appellant can be deemed to have exhausted local appeals without completing all such local appellate processes in certain situations, the most common being that the local government either did not follow proper CDP notice and hearing procedures, or it charges a fee for local appellate CDP processes. In addition, any two Coastal Commissioners are eligible to appeal regardless of participation status and without exhausting local appeals.

What are the allowed grounds for appeal?

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., 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. Appellants need to clearly identify the ways in which they believe the development meets or doesn’t meet, as applicable, the LCP and Coastal Act provisions, with citations to specific provisions as much as possible, and emphasis on the areas where they believe the local government decision was in error. Appellants are encouraged to be concise, and to arrange their appeals by topic area and by individual policies.

When, where, and how can appeals be filed?

Local governments are required to send notices of their final CDP decisions to the Coastal Commission. The filing of a complete final local action notice, or FLAN, starts a 10-working day appeal period for that action running, during which time appeals may be filed with the Commission. Currently appealable local CDP actions are available for

³ For definitions of ‘energy facility’ and ‘public works’ see Coastal Act Sections 30107 and 30114. For determining what constitutes ‘major’, see California Code of Regulations, Title 14, Section 13012.

Appeal Information Sheet

Page 2

review in the Commission district office with jurisdiction over that geographic area (again, click [here](#) for the Commission contact page) and are also published on the Commission's website (click [here](#) to see currently see appealable local actions). Appeals may be submitted in person, via email,⁴ or by mail to the district office with jurisdiction over the project area. An appeal must be received by 5pm of the tenth working day of the appeal period, and appeals received after that time will be rejected.

Is there a fee for appeals?

There is no fee for an appeal unless the appeal is deemed patently frivolous by the Executive Director (in which case a \$300 fee must be paid within 5-working days of receiving notice of the Executive Director's determination, or the appeal will not be filed)⁵ or it is an appeal of a CDP major project denial decision, in which case the appeal must be accompanied by a fee in the amount that would apply to the denied development if it were a CDP application for the same project pursuant to the Commission's CDP application fee regulations, and where the full and proper fee must be received by the Commission by 5pm on the tenth working day (see above) or the appeal will be deemed invalid and will not be processed. In the latter case, potential appellants are encouraged to contact staff in the Commission district office with jurisdiction over the applicable area to ensure the proper fee is timely submitted. Either way, it is the appellant's responsibility to submit the proper fee, and in cases where the fee is not submitted or the fee submitted is insufficient to cover the required development application fee, the appeal will be rejected.

How do I track potential appealable CDP actions and appeal periods?

Staff in the Commission district office with jurisdiction over the applicable area are your best sources for information on local government CDP decisions and appeal provisions. In addition, each district office maintains a list of currently appealable CDP decisions, with information on the development that was approved or denied, along with the appeal period dates and deadlines. This list can be accessed at the offices (again, see contact information [here](#)). In addition, appealable local government decisions are listed on the Commission's website [here](#).

⁴ Emailed appeals are ONLY accepted if sent to the general email address for the Coastal Commission district office with jurisdiction over the geographic area where the development is proposed (e.g., for the North Coast District Office the general email address is northcoast@coastal.ca.gov, for the North Central Coast District Office the address is northcentralcoast@coastal.ca.gov, etc.). An appeal emailed to some other email address, including a different district's general email address or a staff email address, will be rejected. It is a would-be appellant's responsibility to use the correct email address. The addresses are contained on the appeal form for each district. For more information, click here for the Commission [contact page](#) which identifies each district geographically and identifies each district's general email address.

⁵ If the Coastal Commission ultimately determines that the appeal raises a substantial issue (see also discussion below), then the \$300 fee will be refunded.

Appeal Information Sheet

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Where do I find the appeal form?

The appeal forms are available on the Commission's website. Download the appropriate form for the district from this [page](#).

What happens after I submit an appeal?

Provided the appeal is properly and timely submitted, including any required fees (see above), Commission staff will notify the applicants, the appellants, the local government, and known interested parties that the appeal has been filed, and will ask the affected local government to forward a copy of the local administrative record for the subject CDP decision to the Commission. Commission staff will then evaluate the appeal contentions and prepare a staff recommendation on the appeal for Commission consideration.

What happens when the Commission considers an appeal?

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.⁶ 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, 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 (or their representatives), and the local government 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

⁶ Including (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 and the Coastal Act's public access provisions; (2) the extent and scope of the development; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance.

Appeal Information Sheet

Page 2

government's CDP decision stands. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the CDP application, 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.

What if I have questions?

If you have any questions about this information sheet or any aspect of the appeal process, please contact Commission staff in the Commission district office with jurisdiction over the area in question (click [here](#) to visit the Commission's contact page).

Exhibit D



220 High Street
San Luis Obispo CA 95401
805.543.8539

1021 Tama Lane, Suite 105
Santa Maria, CA 93485
805.614.6333

201 S. Milpas Street, Suite 103
Santa Barbara, CA 93103
805.668.2200

info@geosolutions.net
sbinfo@geosolutions.net

July 28, 2020
Project No. SL06635-4

David Tibbitts
1210 Pacific Avenue
Cayucos, California 93430

Subject: **Discussion: Discussion of Bluff Rock-Revetment Structure**
1210 Pacific Avenue, APN: 064-227-006,
Cayucos Area, San Luis Obispo County, California

Dear Mr. Tibbitts:

1.0 INTRODUCTION

This letter discusses the rock revetment structure at the bluff of 1210 Pacific Avenue, APN: 064-227-006 in the Cayucos area of San Luis Obispo County, California. It is our understanding that California Coastal Commission staff is recommending a condition which would stipulate removal of the existing rock revetment structure at the bluff if future development at the subject property is to proceed.

2.0 SITE CONDITIONS

A single-family residence remodel is proposed at 1210 Pacific Avenue in the Community of Cayucos in San Luis Obispo County, California. A rock revetment structure is present at the bluff of the property and Franciscan Complex formational rock is exposed within the base of the bluff. The parcel maintains approximately 40 feet of frontage along Pacific Avenue and is approximately 112 feet along the southeast property boundary. The property will hereafter be referred to as the Site. Coordinates for the Site are 35.44014 degrees latitude, -120.893720 degrees longitude. It is our understanding that the proposed development includes a redevelopment of the property with no cut or fill proposed. Site bluff photos are presented at the end of this letter.

A Geologic Coastal Bluff Study was conducted by GeoSolutions, Inc. (June 13, 2008; April 8, 2011) and provides a detailed description of the property and subsurface investigation completed for proposed development. The upper bluff region of the Site is relatively flat with a slight slope to the southwest towards the coastal bluff. An existing single-family residence occupies the Site and the bluff maintains vegetation over the existing rock revetment. The top of bluff is approximately 15 feet above the beach. Plates 1A and 1B are site geologic maps that depicts elevations as NAVD88. Plates 2A and 2B are cross sections through the site.

The base of the bluff maintains exposed outcrops of serpentinite, blueshist, and melange rock of the Franciscan Complex. Marine Terrace Deposits consisting of sand, clay, and pebbles (Qt) overlie the formational unit. Sub-surface soil conditions were verified by two borings at the Site,

B-1 and B-2. Rock rip-rap is exposed at the bluff at the site, and at the adjacent property to the northwest. A concrete revetment is present at the southeasterly adjacent property. The site is served by municipal sewage and water. Based on research of historical photos, it is our understanding that the rock revetment structure at the site was constructed sometime in the early 1970's. San Luis Obispo County permit records were also reviewed for any permits associated with the rock revetment structure. No record of any permits were found for the rock revetment structure which is indicative of the structure likely being constructed prior to 1972.

2.1 Surface and Subsurface conditions

Formational units were exposed along the bluff face at the site and adjacent to the site and consist of units of the Franciscan Complex. Plate 1A and 1B, Site Engineering Geology Map, depicts the proposed building area as within Franciscan Complex (KJfm) units overlain by Marine Terrace Deposits (Qt) and surface soils (colluvium and fill). Plates 2A and 2B present a cross section through the building site and bluff.

Subsurface conditions at the site were verified by advancing two borings at the property. The boring locations are depicted on Plates 1A and 1B. A Central Mine Equipment 55 track mounted drill equipped with eight-inch hollow stem auger was used for B-1. Boring B-2 utilized a 60-lb jackhammer and a sampler to conduct a continuous sample boring. The equipment used during drilling of B-2 is considered hand-augering and was used due to limited access to the bluff side of the property. Boring logs are presented at the end of this letter. Boring B-1 encountered fill/topsoil to a depth of 1 foot below ground surface (bgs) underlain by colluvium (Qc) to a depth of 2 feet bgs underlain by Marine Terrace Deposits (Qt) to a depth of 8 feet bgs underlain by Franciscan Complex (KJfm) to a termination depth of 15 feet bgs. Groundwater was observed at a depth of 10.8 feet. Boring B-2 encountered fill/topsoil to a depth of 1-foot bgs, colluvium (Qc) to a depth of approximately 2 feet bgs underlain by Marine Terrace Deposits (Qt) to a depth of approximately 8 feet bgs underlain by Franciscan Complex (KJfm) to a termination depth of 11.5 feet bgs. Adjacent to the site to the northwest is 1200 Pacific Street. A boring conducted there encountered fill/topsoil from ground surface to a depth of 1 foot, colluvium from 1 to 2 feet deep, Terrace deposits from 2 feet to 8.5 feet deep, and Franciscan Complex material from 8.5 feet to 12 feet deep.

2.2 Bluff Retreat Rate

A site-specific average current bluff erosion rate was calculated for the proposed residence. The bluff is actively retreating and is expected to continue. As a conservative value, a retreat rate of 0.54 inches per year was calculated and applied to the site. For a period of 100 years, a retreat rate of approximately 5 feet may be anticipated. It is recommended that proposed new residence construction be setback the minimum default value of 25-feet as specified by the County of San Luis Obispo. This 25-foot setback is 10 feet greater than the combined distance of the 100-year retreat rate with an additional buffer factor of the slope stability analysis or 10-feet (whichever is greater) as measured from the existing bluff top. The 25-foot setback has been approximated on Plates 1A and 1B, Site Engineering Geologic Map and Plate 2A and 2B, Site Cross Section.

As requested by Brian O'Neill, California Coastal Commission, other rates of bluff erosion were to be reviewed for the project. One source of information listed by Mr. O'Neill to be used is a published document by Hapke and Reid, 2007 titled "The National Assessment of Shoreline Change: A GIS Compilation of Vector Cliff Edges and Associated Cliff Erosion Data for the California Coast" (OFR 2007-1133). This document is a general document of general erosion

6.0 DISCUSSION OF SITE PARAMETERS

Geologic conditions at the site are presented on Plate 1A and 1B, Site Engineering Geology Map. Bluff conditions show rock revetment defines the edge of the top of the bluff. Photo 1 depicts this area of the bluff. Note that the rock revetment provides support for the edge of bluff that includes concrete and wood materials. The face of the revetment is steep in this area. Photo 2 depicts a view of the bluff face at the site. Note that there is a base of Franciscan Complex rock with the stacked rock revetment above. A small stairway leads to the base of the revetment from the top of slope. There are continuous connected seawalls to the right (east) and to the left (west) of the subject property revetment. Photo 3 depicts a poured concrete bluff structure that extends into the sand which is the eastern adjacent property. Photo 4 depicts the western adjacent property and shows stacked rocks in similar configuration as the subject property. West of the westerly adjacent property, a public-access stairway is present on the bluff that allows the public access from Pacific Avenue to the beach.

It is our understanding that removal of the seawall at the subject site has been proposed by California Coastal Commission staff. If the revetment is to be removed, the underlying Terrace deposits, colluvium and topsoil would be exposed to direct erosion from ocean waves, rain events, winnowing from wind, and surface runoff. The topographic and physical condition of the surface of the bluff-face that underlies the existing rock revetment is unknown. Removal of the existing rock revetment would likely require contouring of the native bluff by heavy grading equipment since there may be unsafe conditions with respect to loose and unstable soil material and undercut soil material. A licensed grading contractor who is removing the rock revetment would not want to leave an un-safe slope soil condition for beach-goers or property owners. It is assumed that re-contouring of the face of the slope would be necessary and a 2:1 slope (horizontal:vertical) would be a safe assumption for a slope re-contour configuration. This slope configuration would conform to California Building Code requirements. Plates 2A and 2B depict the assumed location of the top of bluff if the rock revetment was removed (it is assumed that rocks within the revetment have an average measurement thickness of approximately 3-feet, but thickness of all stacked rock at the site is unknown) and grading of a 2:1 slope within the soil material occurred. This would lead to excavation and grading of the face of the bluff which would likely move the top of bluff at the site by approximately 15 feet in a lateral landward direction and reduce the useable top of bluff yard space of the property and decrease the distance the bluff edge would be from the existing residence. This is depicted on section line A-A', Plates 2A and 2B. This excavation and grading of the slope would likely also have to occur along the eastern and western portion of the bluff sides of the subject property to be able to intercept the top of bluff at adjacent properties.

As the revetment structure is connected to westerly and easterly adjacent seawalls, removal of the revetment structure at the site would likely allow ocean waves and rain to erode the sides and subsequent rear of the existing seawalls at the westerly and easterly adjacent parcels. Exposure of the sides and rear of the adjacent-property seawalls would likely create an unstable bluff at the adjacent parcels. Through time, the now increased bluff instability at adjacent parcels would likely migrate toward the public access stairway that is established one property west of the subject property, decreasing the stability of that public access. If the stacked rock at the subject site were removed to the property line with the westerly adjacent parcel, the vertical condition of the remaining stacked rock at the westerly adjacent parcel may be jeopardized and may cause a safety concern to people using the beach in that area.

Removal of the revetment structure would likely require use of heavy equipment such as an excavator, front end loader, and jackhammers on the beach to remove the placed rock. Access

to the beach at the site with that type of equipment would likely require the permission of the State Lands Commission and County agencies. Removal of the rock revetment may produce neighborly disagreement and possible legal action because stability of adjoining seawalls may be compromised with removal of the subject property seawall.

The condition of the existing seawall at the subject property is good as this revetment has been at the bluff for approximately 40 years. Environmentally, vegetation is established at the base of the bluff and revetment removal may disturb the vegetation as heavy equipment must be positioned at the beach to remove rock.

The March, 2018 revised “California Coastal Commission Residential Adaptation Policy Guidance” document provides interpretive guidelines for addressing sea level rise in local coastal programs (abbreviated copy contained at the end of this document, p.34). This document states the following:

In addition, shoreline armoring may be an allowable adaptation strategy, at least in the short-term, in order to protect areas where new and existing (i.e., pre-Coastal Act) residential development are intermingled and it is not feasible to have the shoreline armoring only protect the existing development. Likewise, it may be permissible in some cases to allow new development to rely on existing or new armoring if disallowing such development would constitute an unconstitutional taking of private property without just compensation.

The document continues:

Although coastal armoring generally has significant adverse impacts on coastal resources, there are situations – as described above – where armoring may be lawfully allowed and may represent a reasonable short- to mid-term adaptation strategy at a street/neighborhood-level or community scale. This may be especially true in urbanized areas where development is already protected by armoring, where the impacts of armoring on natural shoreline processes will be minimal due to the geology of the area and where the armoring is the least environmentally damaging alternative for adaptation.

The subject property is within an urbanized area where development is already protected by armoring, in addition to the adjacent properties. Included in this armoring is a public access stairway that is located one lot away to the west. The impacts of armoring on natural shoreline processes are minimal as there is exposed Franciscan Complex rock at the base of the bluff and there are adjacent rock revetment structures at adjoining properties and at the public access stairway.

Data from the CoSMoS model input for the subject property shows that with “hold the line” option, the property at the top of the bluff appears to not be affected by a 100-year storm frequency and a sea level rise of 100 cm. The CoSMoS web page states that “coastal slopes greater than 30 degrees are assumed to be hard structures, such as jetties and seawalls, and are assumed to not erode over the time scale of the storms being simulated”, therefore, it is assumed in this report that the seawall at the site (and adjoining properties) will not erode in the time scale of 100-years.

Plates 2A and 2B depict setbacks from the top of bluff, including an “estimated” bluff top if the seawall is removed.

7.0 CONCLUSION AND RECOMMENDATIONS

Removal of the established rock revetment structure at the subject property will expose the native subsurface material to ocean wave action and rain that will likely increase bluff erosion at the subject property and promote instability of the bluff. This, in turn, will increase the rate at which the residence will experience distress from the receding bluff. The established revetments at the bluff face at the easterly and westerly adjacent parcels may experience erosion behind those seawalls if the subject parcel seawall is removed causing increased bluff erosion at those neighboring locations. If the revetment is to be removed, re-contouring of the bluff face soil materials by grading equipment may be necessary to maintain safety of exposed slopes. Grading may reduce useable yard space adjacent to the bluff by as much as 15 feet. The top of bluff would move landward toward the house which would decrease the longevity of the house with respect to bluff retreat.

Reporting of bluff retreat at the subject property followed published site reporting criteria set forth by San Luis Obispo County Title 23.04.118 in addition to those set forth by California Coastal Commission geologist Mark Johnsson (2003). Site-specific analysis was conducted for the project as required. If there are other published, California Coastal Commission-approved and San Luis Obispo County-adopted criteria for establishing bluff retreat, then please inform the undersigned as well as the geologic and engineering community as a whole. We welcome published and approved criteria for establishing bluff retreat and analysis for all engineers and geologists to follow in the State of California and County of San Luis Obispo.

The following are recommended:

1. It is recommended that the rock revetment structure at the bluff of 1210 Pacific Avenue remain as an existing seawall. Removal of the seawall at the subject property is highly discouraged due to the potential for increased erosion of bluff. We do NOT recommend removal of the seawall at 1210 Pacific Avenue.
2. It is recommended that the established bluff setback for redevelopment at the subject property be 25-feet from the current existing top of bluff.
3. No additional work or maintenance is recommended to the rock revetment structure as the structure appears stable and in good condition.

If you have any questions or require additional assistance, please contact the undersigned at (805) 543-8539.

Sincerely,
GeoSolutions, Inc.


John Kammer, C.E.G. #2118
Principal



S:\SL06500-SL06999\SL06635-4 - 1210 Pacific\Geology\SL6635-4 Bluff summary of revetment.docx

Exhibit E



QUEST PLANNING

ENVIRONMENTAL PERMITTING • PROJECT MANAGEMENT

Date: December 10, 2019
To: California Coastal Commission
Attention: Brian O’Neill, Coastal Analyst
725 Front St. # 300
Santa Cruz, CA 95060
From: Amber Davis – Quest Planning

Subject: Response to Appeal from Coastal Permit Decision of Local Government – Appeal Number A-3-SLO-19-0026 Tibbitts

Dear Mr. O’Neill,

The Commission found Substantial Issue in connection with the redevelopment of an existing residential property at 1210 Pacific Avenue in Cayucos, California. The appeal raised questions about the consistency of the proposed project with the San Luis Obispo County Certified Local Coastal Program/Land Use Plan.

The subject parcel is approximately 4,480 sq. ft. in area and lies along the beachfront in Cayucos, California. Over the past several months, the project architect, John MacDonald has been in touch with you concerning geotechnical aspects of the project and proposed conditions from Coastal Commission staff.

In accordance with your most recent request, please find attached a memo entitled **Discussion of Bluff Rock-Revetment Structure** prepared by GeoSolutions, Inc. The geotechnical memo provides further analysis of the existing bluff rock-revetment structure. The analysis considers impacts associated with removal of the existing rock-revetment on the subject property as currently recommended by Coastal Commission staff. The GeoSolutions Certified Engineering Geologist for the project makes several recommendations in the memo, including:

1. It is recommended that the rock-revetment structure at the bluff face of 1210 Pacific Avenue remain as an existing seawall. Removal of the seawall at the subject property is highly discouraged due to the potential for increased erosion of bluff. We do NOT recommend removal of the seawall at 1210 Pacific Avenue.
2. It is recommended that the established bluff setback for redevelopment at the subject property be 25-feet from the current existing top of bluff.
3. No additional work or maintenance is recommended to the rock revetment structure as the structure appears stable and in good condition.



QUEST PLANNING

ENVIRONMENTAL PERMITTING • PROJECT MANAGEMENT

As a follow up to recommendation No. 3, the applicant proposes to record a covenant and restriction as a matter of record on the title of the subject property that memorializes and provides constructive notice regarding the prohibition of rock-revetment maintenance, primarily for subsequent purchasers.

In addition to the further geotechnical study of the rock-revetment structure, Kerry Brown (San Luis Obispo County planner) conducted permit research through the Coastal Records Project on the seawall. It was found that the seawall rock-revetment structure predates the Coastal Act.



Photo 1: Aerial Photograph from 1972 showing the seawall predates the Coastal Act (subject property at 1210 Pacific Ave depicted with a red arrow).

(source: <https://www.californiacoastline.org/cgi-bin/image.cgi?image=7225120&mode=big&lastmode=timecompare&flags=0&year=1972>)

Given the refinements to the project and the additional geotechnical information provided, the applicant respectfully requests a favorable staff recommendation for approval with no modifications to the Bluff Rock-Revetment Structure. If there is an agreement regarding the conditions of approval, the applicant would request a de Novo hearing at the earliest possible time.



QUEST PLANNING

ENVIRONMENTAL PERMITTING • PROJECT MANAGEMENT

On a housekeeping note, please call or email me as the primary contact going forward. I realize you have been contacted by several persons in the past and simply wish to make sure that there is singular line of communication going forward. My contact information is provided below.

In advance, thank you for reviewing the subject information including the attachment. Please feel free to contact me with any questions you may have, or if you are in need of additional information.

Sincerely,

Amber Davis

Quest Planning

(805) 748-1299

amber@questplanning.net

CC: David and Stephanie Tibbitts – Owners

John McDonald – Architect

Attachments:

Attachment A – Discussion of Bluff Rock-Retention Structure prepared by GeoSolutions, Inc. dated December 9, 2019



1021 West Tama Lane, Suite 105, Santa Maria, CA 93454
(805)614-6333, (805)614-6322 fax
SBinfo@geosolutions.net

220 High Street, San Luis Obispo, CA 93401
(805)543-8539, (805)543-2171 fax
info@geosolutions.net

December 9, 2019
Project No. SL06635-4

David Tibbitts
1210 Pacific Avenue
Cayucos, California 93430

Subject: Discussion: Discussion of Bluff Rock-Revetment Structure
1210 Pacific Avenue, APN: 064-227-006,
Cayucos Area, San Luis Obispo County, California

Dear Mr. Tibbitts:

1.0 Introduction

This letter discusses the rock revetment structure at the bluff of 1210 Pacific Avenue, APN: 064-227-006 in the Cayucos area of San Luis Obispo County, California. It is our understanding that California Coastal Commission staff is recommending a condition which would stipulate removal of the existing rock revetment structure at the bluff as a stipulation if future development is to proceed.

2.0 Site Conditions

A single-family residence remodel is proposed at 1210 Pacific Avenue in the Community of Cayucos in San Luis Obispo County, California. A rock revetment structure is present at the bluff of the property and Franciscan Complex formational rock is exposed within the base of the bluff. The parcel maintains approximately 40 feet of frontage along Pacific Avenue and is approximately 112 feet along the southeast property boundary. The property will hereafter be referred to as the Site. Coordinates for the Site are 35.44014 degrees latitude, -120.893720 degrees longitude. It is our understanding that the proposed development includes a redevelopment of the property with no cut or fill proposed. Site photos are presented at the end of this letter.

A Geologic Coastal Bluff Study was conducted by GeoSolutions, Inc. (June 13, 2008; April 8, 2011) and provides a detailed description of the property and subsurface investigation completed for proposed development. The upper bluff region of the Site is relatively flat with a slight slope to the southwest towards the coastal bluff. An existing single-family residence occupies the Site and the bluff maintains vegetation over the existing rock revetment. The top of bluff is approximately 20 feet above the beach. True elevation is not known and the site topographic map is based upon an assumed datum, not a true datum.

The base of the bluff maintains exposed outcrops of serpentinite, blueshist, and metavolcanic rock of the Franciscan Complex. Marine Terrace Deposits consisting of sand, clay, and pebbles (Qt) overlie the formational unit. Sub-surface soil conditions were verified by two borings at the Site, B-1 and B-2. Rock rip-rap is exposed at the bluff at the site, and at the adjacent property to the northwest. A concrete revetment is present at the southeasterly adjacent property. The site is served by municipal sewage and water. Based on research of historical photos, it is our understanding that the rock revetment structure at the site was constructed sometime in the early 1970's. San Luis Obispo County permit records were also reviewed for

any permits associated with the rock revetment structure. No record of any permits were found for the rock revetment structure which is indicative of the structure likely being constructed prior to 1972.

2.1 Surface and Subsurface conditions

Formational units were exposed along the bluff face at the site and adjacent to the site and consist of units of the Franciscan Complex. Plate 1, Site Engineering Geology Map, depicts the proposed building area as within Franciscan Complex (KJfm) units overlain by Marine Terrace Deposits (Qt) and surface soils (colluvium and fill). Plate 2 presents a cross section through the building site and bluff.

Subsurface conditions at the site were verified by advancing two borings at the property. The boring locations are depicted on Plate 1. A Central Mine Equipment 55 track mounted drill equipped with eight-inch hollow stem auger was used for B-1. Boring B-2 utilized a 60-lb jackhammer and a sampler to conduct a continuous sample boring. The equipment used during drilling of B-2 is considered hand-augering and was used due to limited access to the bluff side of the property. Boring logs are presented at the end of this letter. Boring B-1 encountered fill/topsoil to a depth of 1 foot below ground surface (bgs) underlain by colluvium (Qc) to a depth of 2 feet bgs underlain by Marine Terrace Deposits (Qt) to a depth of 8 feet bgs underlain by Franciscan Complex (KJfm) to a termination depth of 15 feet bgs. Groundwater was observed at a depth of 10.8 feet. Boring B-2 encountered fill/topsoil to a depth of 1-foot bgs, colluvium (Qc) to a depth of approximately 2 feet bgs underlain by Marine Terrace Deposits (Qt) to a depth of approximately 8 feet bgs underlain by Franciscan Complex (KJfm) to a termination depth of 11.5 feet bgs.

2.2 Bluff Retreat Rate

A site-specific average current bluff erosion rate was calculated for the proposed residence. The bluff is actively retreating and is expected to continue. As a conservative value, a retreat rate of 0.54 inches per year was calculated and applied to the site. For a period of 100 years, a retreat rate of approximately 5 feet may be anticipated. It is recommended that proposed new residence construction be setback the minimum default value of 25-feet as specified by the County of San Luis Obispo. This 25-foot setback is 10 feet greater than the combined distance of the 100-year retreat rate with an additional buffer factor of the slope stability analysis or 10-feet (whichever is greater) as measured from the existing bluff top. The 25-foot setback has been approximated on Plate 1, Site Engineering Geologic Map and Plate 2, Site Cross Section.

2.3 Slope Stability Analysis

A numerical slope stability analysis was completed to verify stability on the coastal bluff in the vicinity of the proposed residence. The static analysis resulted in a critical factor of safety (minimum factor of safety) greater than 1.5; the horizontal distance from the top of the bluff to the back of the slip surface for a static factor of safety of 2.64 was 4.5 feet. The psuedo-static analysis resulted in a critical factor of safety (minimum factor of safety) greater than 1.1; the horizontal distance for psuedo-static conditions is based off of a factor of safety of 1.91, and was determined to be approximately 14 feet.

3.0 Discussion of Site Parameters

Geologic conditions at the site are presented on Plate 1, Site Engineering Geology Map. Bluff conditions show rock revetment defines the edge of the top of the bluff. Photo 1 depicts this area of the bluff. Note that the rock revetment provides support for the edge of bluff that includes concrete and wood materials. The face of the revetment is steep in this area. Photo 2 depicts a view of the bluff face at the site. Note that there is a base of Franciscan Complex rock with the stacked rock revetment above. A small stairway leads to the base of the revetment from the top of slope. There are continuous connected seawalls to the right (east) and to the left (west) of the subject property revetment. Photo 3 depicts a poured concrete bluff structure that extends into the sand which is the eastern adjacent property. Photo 4 depicts the western

adjacent property and shows stacked rocks in similar configuration as the subject property. West of the westerly adjacent property, a public-access stairway is present on the bluff that allows the public access from Pacific Avenue to the beach.

It is our understanding that removal of the seawall at the subject site has been proposed by California Coastal Commission staff. If the revetment is to be removed, the underlying Terrace deposits, colluvium and topsoil would be exposed to direct erosion from ocean waves, rain events, winnowing from wind, and surface runoff. The topographic and physical condition of the surface of the bluff-face that underlies the existing rock revetment is unknown. Removal of the existing rock revetment would likely require contouring of the native bluff by heavy grading equipment since there may be unsafe conditions with respect to loose and unstable soil material and undercut soil material. A licensed grading contractor who is removing the rock revetment would not want to leave an un-safe slope soil condition for beach-goers or property owners. It is assumed that re-contouring of the face of the slope would be necessary and a 2:1 slope (horizontal:vertical, or 50%, or 26 degrees) would be a safe assumption for a slope re-contour configuration. This slope configuration would conform to California Building Code requirements. Plate 3 depicts the assumed location of the top of bluff if the rock revetment was removed (it is assumed that rocks within the revetment have an average measurement thickness of approximately 3-feet, but thickness of all stacked rock at the site is unknown) and grading of a 2:1 slope within the soil material occurred. This would lead to excavation and grading of the face of the bluff which would likely move the top of bluff at the site by approximately 10 feet in a lateral landward direction and reduce the useable top of bluff yard space of the property and decrease the distance the bluff edge would be from the existing residence. This is depicted on section line B-B'. This excavation and grading of the slope would likely also have to occur along the eastern and western portion of the bluff sides of the subject property to be able to intercept the top of bluff at adjacent properties.

As the revetment structure is connected to westerly and easterly adjacent seawalls, removal of the revetment structure at the site would likely allow ocean waves and rain to erode the sides and subsequent rear of the existing seawalls at the westerly and easterly adjacent parcels. Exposure of the sides and rear of the adjacent-property seawalls would likely create an unstable bluff at the adjacent parcels. Through time, the now increased bluff instability at adjacent parcels would likely migrate toward the public access stairway that is established one property west of the subject property, decreasing the stability of that public access. If the stacked rock at the subject site were removed to the property line with the westerly adjacent parcel, the vertical condition of the remaining stacked rock at the westerly adjacent parcel may be in question and may cause a safety concern to people using the beach in that area.

Removal of the revetment structure would likely require use of heavy equipment such as an excavator, front end loader, and jackhammers on the beach to remove the placed rock. Access to the beach at the site with that type of equipment would likely require the permission of the State Lands Commission and County agencies. Removal of the rock revetment may produce neighborly disagreement and possible legal action because stability of adjoining seawalls may be compromised with removal of the subject property seawall.

The condition of the existing seawall at the subject property is good as this revetment has been at the bluff for approximately 40 years. Environmentally, vegetation is established at the base of the bluff and revetment removal may disturb the vegetation as heavy equipment must be positioned at the beach to remove rock.

4.0 Conclusion and Recommendations

Removal of the established rock revetment structure at the subject property will expose the native subsurface material to ocean wave action and rain that will likely increase bluff erosion at the subject property and promote instability of the bluff. This, in turn, will increase the rate at which the residence will experience distress from the receding bluff. The established revetments at the bluff face at the easterly and westerly adjacent parcels may experience erosion behind those seawalls if the subject parcel seawall is removed causing increased bluff erosion at those neighboring locations. If the revetment is to be removed, re-contouring of the bluff face soil materials by grading equipment may be necessary to maintain safety of exposed slopes. Grading may reduce useable yard space adjacent to the bluff by as much as 10 feet. The top of bluff would move landward toward the house which would decrease the longevity of the house with respect to bluff retreat.

The following are recommended:

1. It is recommended that the rock revetment structure at the bluff face of 1210 Pacific Avenue remain as an existing seawall. Removal of the seawall at the subject property is highly discouraged due to the potential for increased erosion of bluff. We do NOT recommend removal of the seawall at 1210 Pacific Avenue.
2. It is recommended that the established bluff setback for redevelopment at the subject property be 25-feet from the current existing top of bluff.
3. No additional work or maintenance is recommended to the rock revetment structure as the structure appears stable and in good condition.

If you have any questions or require additional assistance, please contact the undersigned at (805) 543-8539.

Sincerely,
GeoSolutions, Inc.


 John Kammer, C.E.G. #2118
 Principal



S:\SL06500-SL06999\SL06635-4 - 1210 Pacific\Geology\SL06635-4 Bluff summary of revetment.docx

REFERENCES

GeoSolutions, Inc, June 13, 2008, Geologic Coastal Bluff Evaluation, 1210 Pacific Avenue, APN: 064-227-006, Cayucos Area, San Luis Obispo County, California.

GeoSolutions, Inc, April 8, 2011, Response to Comments, Geologic Coastal Bluff Evaluation, 1210 Pacific Avenue, APN: 064-227-006, Cayucos Area, San Luis Obispo County, California.

Exhibit F

From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent on: Tuesday, December 8, 2020 12:29:54 AM
To: O'Neill, Brian@Coastal <Brian.O'Neill@coastal.ca.gov>
CC: Amber Davis <amber@questplanning.net>
Subject: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)
Attachments: 12 7 2020 Letter to Brian O'Neill.pdf (124.97 KB)

Hi Brian,

Please find, attached, our letter concerning the pending appeal in the above-referenced matter.

Thank you,

Paul Beard II
Partner

FisherBroyles, LLP
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direct: 818-216-3988
paul.beard@fisherbroyles.com

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DALLAS | DENVER | DETROIT | HOUSTON | LONDON | LOS ANGELES | MIAMI | NAPLES | NEW YORK
| PALO ALTO | PHILADELPHIA | PRINCETON | SALT LAKE CITY | SEATTLE | WASHINGTON, DC

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December 7, 2020

VIA EMAIL

Brian O'Neill
California Coastal Commission
Central Coast District Office
Santa Cruz, CA 95060
Email: Brian.O'Neill@coastal.ca.gov

Re: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Dear Brian,

We represent David Tibbitts, the project applicant in the above-referenced appeal. For the reasons described below, we request that staff set the *de novo* hearing for its January 13-15, 2021 meeting.

First, this appeal was filed on April 22, 2019. The Commission found “substantial issue” with San Luis Obispo County’s approval on June 13, 2019. Exactly 1-1/2 years later, the *de novo* hearing has not been scheduled. This extraordinary delay in bringing this appeal to a close is by no means a “normal” part of the land-use permitting process and, at a minimum, violates Mr. Tibbitts’ due process rights.¹ (U.S. Const. amend. XIV; *Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 547 (“The Due Process Clause requires provision of a hearing at a meaningful time.”)). The delay has been especially stressful and harmful to the Tibbitts, who require a remodeled home for health and safety reasons, particularly given Mr. Tibbitts’ condition. Mr. Tibbitts is wheelchair-bound, and the house requires significant upgrades to make it ADA-compliant and safe for him, his family, and caregivers. A *de novo* hearing is long overdue, if only for humanitarian reasons.

¹ If the Commission unreasonably denies the project, as proposed, these unconscionable administrative delays may give rise to a taking requiring compensation. (U.S. Const. amends. V, XIV; *Lockaway Storage v. County of Alameda* (2013) 216 Cal. App. 4th 161).

Second, and for the record, there is no basis for the Commission’s jurisdiction over this project. The “substantial issue” determination was based largely on the false notion that the riprap is illegal. As historic images show, and as the County has confirmed, the riprap pre-dates the Coastal Act and therefore is lawful.²

The Commission also anchors its “substantial issue” determination in Estero Area Plan (EAP) policies that don’t implicate this project and therefore fail to justify the Commission’s jurisdiction. Policy 7.III.I.5 states that “[s]horeline and bluff protection structures shall not be permitted to protect new development” and, to that end, requires that “no shoreline protection structure shall be proposed or constructed to protect the development.” Even assuming the constitutionality of that provision (which we deny), the policy does not implicate this project, because Mr. Tibbitts is not proposing any new shoreline protection for the project. As explained above, the riprap at the property already exists (and has existed since before the Coastal Act). Policy 7.III.I.5 says nothing about *existing* shoreline protection (whether permitted or not). Thus, Policy 7.III.I.5 does not apply.

Similarly, Policy 7.III.I.4 concerns “bluff setbacks” and provides, in relevant part, that “[a]lteration or additions to existing development that is non-conforming with respect to bluff setbacks that equals or exceeds 50 percent of the size of the existing structure . . . shall not be authorized unless the entire structure is brought into conformance with this setback requirement and all other policies and standards of the LCP.” By its own terms, this policy is triggered only for existing development “that is non-conforming with respect to bluff setbacks.” But, of course, the existing development *does* conform to setback requirements, as it is set back 25 feet from the bluff edge. Further, even if it applied, Policy 7.III.I.4 does not say that existing shoreline devices must be torn down as the condition of new development.

Finally, we disagree with the “substantial issue” finding that the analysis required by Policy 7.III.I.3 was not undertaken. As the County’s Planning Department summarized in its staff report: “A Geologic Coastal Bluff Evaluation was prepared by GeoSolutions, Inc. (June 13, 2008 and April 2011) and reviewed by LandSet Engineers, Inc. (December 2008 and May 2011). LandSet determined that the project engineering constraints had been adequately characterized and concurred with the recommendations and conclusions of the report. The new residence will be set back 25 feet from the top of bluff (adequate to withstand bluff

² A 1972 aerial shows the property with the riprap, before Proposition 20 or the Coastal Act. That aerial can be accessed at: <https://www.californiacoastline.org/cgi-bin/image.cgi?image=7225120&mode=big&lastmode=timecompare&flags=0&year=1972>.

erosion and wave action for a period of 100 years). The project is compatible with the surrounding character as it is consistent with the Cayucos Community Small Scale Neighborhood Design standards. The proposed development meets these requirements.” This easily meets the requirements of Policy 7.III.I.3.

In closing, we understand that the Commission has indicated an interest in finding a mutually acceptable resolution to the riprap issue. But Mr. Tibbitts has patiently waited for a response to no avail, despite expert submissions and repeated requests for updates. If the Commission staff’s view is that the riprap must be removed or modified in any way as the condition of permit approval, Mr. Tibbitts cannot agree, and there is no point in further delaying the *de novo* hearing.

We request that his project, as approved by the County, be considered by the Commission at its January 2021 meeting.³ We would greatly appreciate it if you would let us know by December 18 if staff will accommodate this request.

Very truly yours,



Paul J. Beard II
Counsel for David Tibbitts

³ Our request that the Commission schedule the *de novo* hearing *post haste* is made subject to our continued objection that the Commission has no jurisdiction in this matter. Nothing in this letter should be construed as a waiver of that argument.

From: O'Neill, Brian@Coastal
To: [Paul Beard](#); [Amber Davis](#)
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)
Date: Tuesday, January 26, 2021 7:21:26 PM
Attachments: [image001.jpg](#)
[4-83-155 Staff Report.pdf](#)
[OTD - Williams 4-83-155.pdf](#)
[COA - Williams 4-83-155.pdf](#)
[Smith letter 7.12.88.pdf](#)

Attached are the staff report, OTD, certificate of acceptance, and a letter from the prior property owner that was submitted with the OTD. Although I have a high degree of confidence that the staff report is accurate, it does not have the "Approved" stamp that indicates it is the final approved version. There is a small possibility that changes to the conditions or findings were made through an addendum or at the hearing. The staff report is also attached to the OTD, but this copy also does not have an approved stamp. I have not heard back from our administrative staff regarding any progress on locating the original file, but will let you know if anything turns up. I have also previously requested these files.

With regard to a potential hearing, I was just able to meet internally this past Friday. We are targeting the April hearing to bring forward the de novo review. I believe I will be prepared to discuss our potential recommendation by next week.

~Brian

From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Tuesday, January 26, 2021 1:15 PM
To: O'Neill, Brian@Coastal <Brian.O'Neill@coastal.ca.gov>; Amber Davis <amber@questplanning.net>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Anything you can provide us would be helpful.

Also, we are waiting to hear back on a hearing date. Any progress on that front?
Thank you.

Paul Beard II
Partner

[FisherBroyles, LLP](#)
direct: 818-216-3988
paul.beard@fisherbroyles.com
www.fisherbroyles.com

From: O'Neill, Brian@Coastal <Brian.O'Neill@coastal.ca.gov>
Sent: Tuesday, January 26, 2021 1:11 PM
To: Paul Beard <Paul.Beard@fisherbroyles.com>; Amber Davis <amber@questplanning.net>

Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

To the contrary of your inaccurate accusation, our staff report clearly stated in footnote 3 that “[t]he Commission has not yet been able to retrieve these files from State archives in Sacramento, and thus additional information on these permits that may be relevant is, as of the date of this staff report, unaccounted for. The characterization herein is from copies of materials found in Commission violation files associated with the site.”

The issue I have encountered with older permits, specifically those in San Luis Obispo County, is that the County was previously under the jurisdiction of our Ventura office. When the jurisdictions were reorganized, some of the older permit files were not accurately refiled in state archives. I will need to check in with our administrative staff to see if they have been able to get the original ECDP and CDP, which should have been filed together. We ourselves do not have physical access to the archived files and rely on state archives staff to locate them for us.

As far as the violation file, typically violation files are considered confidential and are not publicly disclosed as they may contain investigative materials. What was described in the staff report is a copy of the original staff report and I also believe the file contained a copy of the OTD that was recorded in 1988, several years after the original approval expired. I will need to check in with our enforcement staff, but I believe I can provide you those documents since we cannot locate the originals. I am fairly certain I sent them to the Applicant’s first representative, John Macdonald. The caveat is that because these are copies of the originals, we would not consider them to be the official version, as we alluded to in footnote 3.

Thanks,
Brian

From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Tuesday, January 26, 2021 9:21 AM
To: O'Neill, Brian@Coastal <Brian.O'Neill@coastal.ca.gov>; Amber Davis <amber@questplanning.net>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Yes, but we’ve gotten nowhere. Someone is sitting on them. We were hoping you have ready copies, since you cited them in your staff report.

Paul Beard II
Partner

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www.fisherbroyles.com

From: O'Neill, Brian@Coastal <Brian.O'Neill@coastal.ca.gov>
Sent: Tuesday, January 26, 2021 9:18 AM
To: Amber Davis <amber@questplanning.net>
Cc: Paul Beard <Paul.Beard@fisherbroyles.com>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Amber,

Perhaps I am mistaken, but did you request these through a PRA request a couple of months ago? Were the files provided to you at that time?

Thanks,
Brian

From: Amber Davis <amber@questplanning.net>
Sent: Monday, January 25, 2021 9:52 AM
To: O'Neill, Brian@Coastal <Brian.O'Neill@coastal.ca.gov>
Cc: Paul Beard <Paul.Beard@fisherbroyles.com>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Good morning, Brian –

Could you provide copies of the following permits associated with the seawall at the Tibbitts property (1210 Pacific Street, Cayucos)? The permits are referenced in the CCC staff report on page 6.

- ECDP 4-83-155-G [1983 emergency permit for temporary installation of riprap]
- CDP Application 4-83-155 [1983 approval recognizing riprap installed under above permit]
- File for Violation Number V-4-86-069

Regards,



Amber Davis

Owner at Quest Planning

Phone 805-748-1299

Website www.questplanning.net

Email amber@questplanning.net

From: O'Neill, Brian@Coastal <Brian.O'Neill@coastal.ca.gov>
Sent: Wednesday, December 30, 2020 10:02 AM
To: Paul Beard <Paul.Beard@fisherbroyles.com>
Cc: Amber Davis <amber@questplanning.net>

Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hello Paul,

I am hoping to discuss the project and can provide you with an update next week as most folks have been out of the office over the holidays.

Thanks,
Brian

From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Monday, December 28, 2020 2:12 PM
To: O'Neill, Brian@Coastal <Brian.O'Neill@coastal.ca.gov>
Cc: Amber Davis <amber@questplanning.net>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Brian,

I am circling back to see if you have had the chance to confer with your management about calendaring our item for the earliest possible meeting. Please let us know.

Thank you,

Paul Beard II
Partner

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direct: 818-216-3988
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www.fisherbroyles.com

From: O'Neill, Brian@Coastal <Brian.O'Neill@coastal.ca.gov>
Sent: Wednesday, December 9, 2020 1:32 PM
To: Paul Beard <Paul.Beard@fisherbroyles.com>
Cc: Amber Davis <amber@questplanning.net>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hello Paul,

Generally this has been a difficult time as we have had an already thin staff stretched further due to colleagues taking leaves of absence to take care of children who can not attend in-person school, a state required mandate to reduce all staff's hours by 10%, and the added difficulty of office closures. The staff report production cycle this particular month is also shorter than normal due to the holiday calendar. Our internal deadline for draft January reports has already passed. Typically we do not

have a January hearing at all due to this condensed cycle, but as an agency we are still behind due to the covid-related hearing cancellations that occurred earlier in the year and were forced to hold a January hearing to deal with some of that backlog. And although this is a “small” project in scope, the potential precedential nature of how to deal with demo/rebuilds with existing armoring structures in Cayucos generally in an important state-wide matter. I could provide a target date, but nothing can be considered certain, particularly when there is no specific legal deadline. I personally do not set the agenda, which must consider a range of factors, so I will confer with management to try to get sense of timing.

Thanks for understanding.

~Brian

From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Wednesday, December 9, 2020 1:12 PM
To: O'Neill, Brian@Coastal <Brian.O'Neill@coastal.ca.gov>
Cc: Amber Davis <amber@questplanning.net>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Brian,

Could you shed some light on why the project cannot be calendared for January—or even for a date certain? It’s a relatively small project, and it’s not clear to us what is driving the current delay and uncertainty about when the appeal can be heard.

Thanks for any insight you can provide,

Thanks,

Paul Beard II
Partner

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direct: 818-216-3988
paul.beard@fisherbroyles.com
www.fisherbroyles.com

From: O'Neill, Brian@Coastal <Brian.O'Neill@coastal.ca.gov>
Sent: Wednesday, December 9, 2020 1:01 PM
To: Paul Beard <Paul.Beard@fisherbroyles.com>
Cc: Amber Davis <amber@questplanning.net>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hello Paul,

I have confirmed that we will not be able to bring the Tibbits project to hearing for January, but are committed to bringing the de novo review forward as soon as possible. I will note that staff was willing to bring the de novo forward soon after the substantial issue hearing. The original geotechnical report completed for the project supported a potential recommendation for removal of the existing armoring, as it concluded that the proposed project would be safe with or without armoring far beyond the useable life of the project. After discussing that potential recommendation, the Applicant through his representatives requested additional time to provide develop an updated geotechnical report that responded more directly to the Commission's concerns. That updated geotechnical information was provided to staff on August 5, 2020, some 14 months after the substantial issue hearing. Thus your statement that the project has been held up for a year and a half because of unreasonable administrative delay is not accurate. That said, again, staff is committed to bringing the project to hearing in the near term.

I will also note that although we acknowledge and appreciate your comments regarding the Commission's jurisdiction over the project, the Commission has already found Substantial Issue and taken jurisdiction over the project. We will review your substantive comments in relation to de novo review.

Thanks,
Brian

From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Monday, December 7, 2020 4:30 PM
To: O'Neill, Brian@Coastal <Brian.O'Neill@coastal.ca.gov>
Cc: Amber Davis <amber@questplanning.net>
Subject: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Brian,

Please find, attached, our letter concerning the pending appeal in the above-referenced matter.

Thank you,

Paul Beard II
Partner

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From: Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>
Sent: Friday, April 23, 2021 10:25 AM
To: Paul Beard <Paul.Beard@fisherbroyles.com>
Cc: Amber Davis <amber@questplanning.net>; John MacDonald <jmacd@charter.net>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Paul, thanks for checking in. We're still in a bit of flux right now in our office with multiple planners leaving and short-staffed, so we're not able to put this on for May. At this point I would say June or July since this project is a priority, but I won't know for sure until we have a little more clarity on the staffing and assignment situation in the office. I apologize for this affecting the project's timing, but it is a reality at the moment.

Thank you for your patience. As soon as we have more information regarding timing and next steps, I will let you know.

Thanks,
Kevin

From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Thursday, April 22, 2021 9:51 AM
To: Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>
Cc: Amber Davis <amber@questplanning.net>; John MacDonald <jmacd@charter.net>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Kevin –

Are we confirmed for the May meetings?

Thanks!

Paul Beard II
Partner

From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent on: Thursday, April 22, 2021 4:51:00 PM
To: Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>
CC: Amber Davis <amber@questplanning.net>; John MacDonald <jmacd@charter.net>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Kevin –

Are we confirmed for the May meetings?

Thanks!

Paul Beard II
Partner

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direct: 818-216-3988
paul.beard@fisherbroyles.com
www.fisherbroyles.com

From: Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>
Sent: Thursday, March 25, 2021 10:12 AM
To: Paul Beard <Paul.Beard@fisherbroyles.com>
Cc: Amber Davis <amber@questplanning.net>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Paul, thanks for reaching out. While I'm pretty familiar with the project's details, I do need to brush up where Brian left off. But this is a priority project to bring to hearing, so my best guess at this time is May or June. I will keep you up-to-date regarding timing.

Thanks.
Kevin

From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Thursday, March 25, 2021 9:56 AM
To: Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>
Cc: Amber Davis <amber@questplanning.net>
Subject: FW: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Good morning, Kevin: could you provide us with an update on where staff is in calendaring this for a hearing? Thank you.

Paul Beard II
Partner

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direct: 818-216-3988
paul.beard@fisherbroyles.com

www.fisherbroyles.com

From: Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov>
Sent: Wednesday, March 24, 2021 4:43 PM
To: Paul Beard <Paul.Beard@fisherbroyles.com>
Cc: Amber Davis <amber@questplanning.net>; Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>
Subject: Re: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Paul,

Hope all is well with you as well. And yes, we unfortunately just lost Brian to a different job. A big blow to our program. We are also down an analyst taking long term leave due to childcare issues stemming from the pandemic, so that means our Central Coast coastal planning staff is currently decreased by a third, and on top of that are under a mandatory 5% leave without pay order, which further decreases our capacity. I only tell you that because it will affect when this matter is ultimately set for a hearing.

At this point Kevin Kahn, the District Supervisor, has been assigned the case until we have an analyst for backfill. I have copied Kevin here, and you can follow up with him directly. Hope that helps...

Dan

From: Paul Beard <Paul.Beard@fisherbroyles.com>
Date: Wednesday, March 24, 2021 at 4:09 PM
To: Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov>
Cc: Amber Davis <amber@questplanning.net>
Subject: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Good afternoon, Dan:

Hope this email finds you well.

With Brian's departure last week, we are hoping to find out which analyst is now assigned to this file. Brian had told us that he expected our appeal to be heard at the Commission's April meetings, which we hope to still be the case. It would be great if we could connect with the point-person on this.

Thanks much,

Paul Beard II
Partner

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From: Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Sent: Monday, May 24, 2021 2:59 PM
To: Paul Beard <Paul.Beard@fisherbroyles.com>
Cc: Amber Davis <amber@questplanning.net>
Subject: Re: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Paul: our June agenda is out and the staff report mailing was Friday. We are down a couple planners and I have several other very high priority items with statutory deadlines that are queued up over the next couple of months. Realistically, I am aiming to get this appeal and another one on for de novo hopefully by the Commission's Oct/Nov hearings. I apologize for the delay and will let you know if anything changes. Also, don't hesitate to reach out if you have further questions or concerns.

Regards, Ryan

Ryan Moroney
California Coastal Commission
Central Coast District Supervisor

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From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Monday, May 24, 2021 2:50 PM
To: Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Cc: Amber Davis <amber@questplanning.net>
Subject: FW: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Ryan – Can you get us on the June agenda?

Paul Beard II
Partner

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www.fisherbroyles.com

From: Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>
Sent: Monday, May 24, 2021 2:47 PM

To: Paul Beard <Paul.Beard@fisherbroyles.com>; Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>

Cc: Amber Davis <amber@questplanning.net>

Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Paul, thanks for checking in. Ryan Moroney, a fellow supervisor in our office is now the lead planner on the project. He can give you a better sense of timing and next steps. Thanks.

From: Paul Beard <Paul.Beard@fisherbroyles.com>

Sent: Monday, May 24, 2021 12:56 PM

To: Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>

Cc: Amber Davis <amber@questplanning.net>

Subject: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Kevin –

Can we get a hearing on this matter in June? June will be the 2-year anniversary of when the commission found “substantial issue.” The delays in getting this to a de novo hearing are causing serious hardship to our client, who (as you may know) is caring for a wheelchair-bound spouse in a house that is not simply not fit for their unique situation.

Please let us know.

Paul Beard II
Partner

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From: [Moroney, Ryan@Coastal](mailto:Moroney.Ryan@Coastal)
To: [Paul Beard](#)
Cc: [Amber Davis](#)
Subject: Re: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)
Date: Thursday, June 3, 2021 10:05:57 AM

Paul: thanks for your email. I don't really have anything to add beyond what I have already stated.

Ryan Moroney
California Coastal Commission
Central Coast District Supervisor

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From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Tuesday, May 25, 2021 10:25 AM
To: Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Cc: Amber Davis <amber@questplanning.net>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Ryan –

Thanks for your email. We are at a loss to understand this extraordinary delay (even taking into account under-staffing). Could you provide more detail about the necessity of the delay, in light of the following facts?:

Your predecessor on this project (Brian) stated to us that “staff was willing to bring the de novo forward soon after the substantial issue hearing.” (See attached email from Brian). In other words, staff was prepared to bring the matter to de novo hearing “soon after” June 2019 (the month of the substantial issue determination). That was nearly 2 years ago.

Given staff’s position on our project back in June 2019, we asked for some time to prepare and submit an updated geotechnical report to try to change staff’s mind.

That was submitted on December 10, 2019, followed by a subsequent report submitted July 28, 2020 to provide additional information based on staff's request. But the reports did not change staff's analysis or conclusion. That was almost 1 year ago.

In light of the foregoing – particularly, that staff was ready to bring this two hearing shortly after the SI hearing, and its analysis and conclusion haven't changed since then – can you tell us why it should take 4-5 more months to bring this to hearing? I could see why it could take time to undertake a new or different analysis given recently provided information, but staff holds the same views today as it held two years ago – and, at that time, was ready to bring the matter to a de novo hearing.

Paul Beard II
Partner

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paul.beard@fisherbroyles.com
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From: Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Sent: Monday, May 24, 2021 2:59 PM
To: Paul Beard <Paul.Beard@fisherbroyles.com>
Cc: Amber Davis <amber@questplanning.net>
Subject: Re: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Paul: our June agenda is out and the staff report mailing was Friday. We are down a couple planners and I have several other very high priority items with statutory deadlines that are queued up over the next couple of months. Realistically, I am aiming to get this appeal and another one on for de novo hopefully by the Commission's Oct/Nov hearings. I apologize for the delay and will let you know if anything changes. Also, don't hesitate to reach out if you have further questions or concerns.

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Ryan Moroney
California Coastal Commission
Central Coast District Supervisor

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From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Monday, May 24, 2021 2:50 PM
To: Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Cc: Amber Davis <amber@questplanning.net>
Subject: FW: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Ryan – Can you get us on the June agenda?

Paul Beard II
Partner

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From: Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>
Sent: Monday, May 24, 2021 2:47 PM
To: Paul Beard <Paul.Beard@fisherbroyles.com>; Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Cc: Amber Davis <amber@questplanning.net>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Paul, thanks for checking in. Ryan Moroney, a fellow supervisor in our office is now the lead planner on the project. He can give you a better sense of timing and next steps. Thanks.

From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Monday, May 24, 2021 12:56 PM
To: Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>
Cc: Amber Davis <amber@questplanning.net>
Subject: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Kevin –

Can we get a hearing on this matter in June? June will be the 2-year anniversary of when the commission found “substantial issue.” The delays in getting this to a de novo hearing are causing serious hardship to our client, who (as you may know) is caring for a wheelchair-bound spouse in a house that is not simply not fit for their unique situation.

Please let us know.

Paul Beard II
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From: Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>
Sent: Thursday, August 26, 2021 12:05:22 PM
To: Paul Beard <Paul.Beard@fisherbroyles.com>; Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Cc: Amber Davis <amber@questplanning.net>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Paul, hope you are doing well. I can't confirm which month, but we do intend to bring this forward in the near term. Ryan can get back to you regarding timing when he's back.

Thanks.

From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Wednesday, August 25, 2021 8:04 AM
To: Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>; Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Cc: Amber Davis <amber@questplanning.net>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Kevin – I just wrote Ryan to see if he can confirm a hearing on this matter for October. I see he is not back till Sept 7. Do you have any intelligence to confirm? Thanks

Paul Beard II
Partner

FisherBroyles, LLP
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paul.beard@fisherbroyles.com
www.fisherbroyles.com

From: Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>
Sent: Monday, May 24, 2021 2:47 PM
To: Paul Beard <Paul.Beard@fisherbroyles.com>; Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Cc: Amber Davis <amber@questplanning.net>
Subject: RE: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

Hi Paul, thanks for checking in. Ryan Moroney, a fellow supervisor in our office is now the lead planner on the project. He can give you a better sense of timing and next steps. Thanks.

From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Monday, May 24, 2021 12:56 PM
To: Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>
Cc: Amber Davis <amber@questplanning.net>
Subject: Appeal No. A-3-SLO-19-0026 (David Tibbitts / 1210 Pacific Street, Cayucos)

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Can we get a hearing on this matter in June? June will be the 2-year anniversary of when the commission found “substantial issue.” The delays in getting this to a de novo hearing are causing serious hardship to our client, who (as you may know) is caring for a wheelchair-bound spouse in a house that is not simply not fit for their unique situation.

Please let us know.

Paul Beard II
Partner

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paul.beard@fisherbroyles.com

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From: Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Sent: Friday, September 10, 2021 2:32:51 PM
To: Paul Beard <Paul.Beard@fisherbroyles.com>
Cc: Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>
Subject: Re: CCC meetings

Hi Paul: thanks for the follow up. We are hoping to bring this item to hearing by the end of the year, but it is not going to make October. I will let you know when I know more.

Regards,

Ryan Moroney
California Coastal Commission
Central Coast District Supervisor

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From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Thursday, September 9, 2021 11:38 AM
To: Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Subject: RE: CCC meetings

Hi Ryan – following up on this. Will my client finally get a hearing in October? Thank you.

Paul Beard II
Partner

FisherBroyles, LLP
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paul.beard@fisherbroyles.com
www.fisherbroyles.com

From: Paul Beard
Sent: Wednesday, August 25, 2021 8:02 AM
To: Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Subject: RE: CCC meetings

Ryan – how are we looking for an October hearing?

Paul Beard II

Partner

FisherBroyles, LLP
direct: 818-216-3988
paul.beard@fisherbroyles.com
www.fisherbroyles.com

From: Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Sent: Tuesday, July 20, 2021 10:21 AM
To: Paul Beard <Paul.Beard@fisherbroyles.com>
Subject: Re: CCC meetings

It looks like the first meeting will be in October, assuming nothing changes between now and then... either way your client will likely be able to participate via the web interface. Regards,

Ryan Moroney
California Coastal Commission
Central Coast District Supervisor

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From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Wednesday, July 14, 2021 4:12 PM
To: Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Subject: RE: CCC meetings

If September opens up to public attendance, would you consider trying to get us on for that meeting, since it's in the Central Coast, and our client and her disabled husband could attend?

Paul Beard II
Partner

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paul.beard@fisherbroyles.com
www.fisherbroyles.com

From: Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Sent: Wednesday, July 14, 2021 3:37 PM
To: Paul Beard <Paul.Beard@fisherbroyles.com>
Subject: Re: CCC meetings

Hi Paul: we have heard possibly in September, but nothing has been confirmed yet.

Ryan Moroney
California Coastal Commission
Central Coast District Supervisor

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From: Paul Beard <Paul.Beard@fisherbroyles.com>
Sent: Wednesday, July 14, 2021 9:22 AM
To: Moroney, Ryan@Coastal <Ryan.Moroney@coastal.ca.gov>
Subject: CCC meetings

Hi Ryan – when do you expect coastal commission hearings to go live / physical again?

Paul Beard II
Partner

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direct: 818-216-3988
paul.beard@fisherbroyles.com

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