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**W21b**

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 Staff: Rainey Graeven - SC
 Staff Report: 11/22/2017
 Hearing Date: 12/13/2017

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal Number: A-3-SCO-17-0010

Applicant: Pietro Family Investments

Appellants: John Hunter, Tracy Inkeles, and Greg Madsen¹

Local Government: Santa Cruz County

Local Decision: Approved by the Santa Cruz County Planning Commission on January 11, 2017 (Coastal Development Permit (CDP) Application Number 151204).

Project Location: Vacant lot located on the inland side of East Cliff Drive (at 23905 East Cliff Drive) approximately 500 feet downcoast of its intersection with 38th Avenue in the Pleasure Point Area of Live Oak in Santa Cruz County.

Project Description: Subdivide an existing 39,250-square-foot parcel into eight residential parcels and construct eight residential dwelling units.

Staff Recommendation: Substantial Issue Exists; Approval with Conditions

Important Hearing Procedure Note: The Coastal Commission will not take testimony on the “substantial issue” portion of staff’s recommendation unless at least three commissioners request it. The Commission may ask questions of the Applicant, any aggrieved person, the Attorney General’s representative or the Executive Director prior to determining whether or not to take

¹ Greg Madsen passed away on July 31, 2017.

testimony regarding whether the appeal raises a substantial issue. If the Commission decides to take such testimony, testimony is generally, and at the discretion of the Commission's Chairperson, 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 follow (unless it has been postponed) during which time the Commission will take general public testimony from any interested parties. (California Code of Regulations, Title 14, Sections 13115 and 13117.)

SUMMARY OF STAFF RECOMMENDATION

Santa Cruz County approved a CDP for the subdivision of a vacant 39,250-square-foot lot into eight parcels and the construction of eight two-story residential dwelling units located at 23905 East Cliff Drive in the Pleasure Point area of Live Oak in unincorporated Santa Cruz County. The Appellants contend that the County's approval raises questions regarding consistency with the County's Local Coastal Program (LCP) provisions related to public access/recreation and the protection of wetlands. Staff recommends that the Commission find that the appeal raises a substantial issue with respect to conformance with the County's LCP, and that the Commission take jurisdiction over the CDP application. Staff further recommends that the Commission approve a conditioned CDP for the project that would appropriately resolve potential LCP inconsistencies.

In terms of the substantial issue question, the County-approved project does raise issues with respect to LCP public access/recreation and wetlands protection requirements. Specifically, with respect to public access/recreation, the County-approved project would result in the net loss of public parking (up to five spaces) in the public right-of-way in front of the project site on East Cliff Drive, which is an extremely popular and important public coastal access area. The LCP protects such existing parking access. With respect to wetlands, the County did not evaluate whether the site contained a wetland, and what type of wetland protection might be required under the LCP. Both of these issues raise a substantial issue with respect to LCP conformance, and staff believes they warrant Commission review of the CDP application de novo.

On de novo review, both of these issues are readily resolvable. With respect to public parking, the Applicant now proposes a revised parking plan for the East Cliff Drive frontage that would formalize and maximize public parking spaces, including by relocating a fire hydrant and other existing improvements to expand available parking at this location. The revised parking configuration benefits public access in this critically important location and the project can be found consistent with LCP's public access requirements through implementation of the Applicant's revised plan. With regards to wetlands, the Applicant has provided information and analysis that indicates that the wet area on the site is part of a created drainage basin used by the County as part of their storage and staging area during construction of the East Cliff Drive promenade project. As such, the wet area constitutes a drainage basin under the LCP within which development is allowed provided the project includes appropriate best management practices (BMPs) to protect water quality and to maintain existing drainage patterns. Such BMPs can be applied via conditions of approval, and other conditions are included in this recommendation for approval of the project to ensure LCP consistency.

In short, the project as conditioned is consistent with the certified LCP, and staff recommends that the Commission approve the conditioned CDP for the project. The substantial issue and CDP motions are found on page 5 below.

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APPENDICES

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EXHIBITS

Exhibit 1: Location Map

Exhibit 2: Site Photos

Exhibit 3: County-Approved Project Plans

Exhibit 4: County's Final Local CDP Action Notice

Exhibit 5: Appeals of Santa Cruz County CDP Approval

Exhibit 6: Wetland Report

Exhibit 7: Retention Area Report

Exhibit 8: Applicant's Proposed Parking Plan

I. MOTION AND RESOLUTION

A. Substantial Issue Determination

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 a 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 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 on the appeal and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Substantial Issue Motion:** I move that the Commission determine that Appeal Number A-3-SCO-17-0010 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-SCO-17-0010 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.*

B. CDP Determination

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***CDP Approval Motion:** I move that the Commission approve Coastal Development Permit Number A-3-SCO-17-0010 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number A-3-SCO-17-0010 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity to the maximum extent possible with Santa Cruz County Local Coastal Program provisions. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittees to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Final Plans/Compliance with County's Conditions.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit, for Executive Director review and approval, two full size sets of Final Plans. The Final Plans shall be prepared by a licensed professional (i.e., surveyor, architect, geotechnical engineer, etc.), shall be based on current professionally surveyed and certified topographic elevations for the entire site, shall include a graphic scale, and shall clearly show the development's siting and design, including through elevation and site plan views. The Final Plans shall be in substantial conformance with the plans shown in Exhibit 3, shall be consistent with the requirements of County Condition III.D.4 (see Exhibit 4), and shall incorporate the proposed Public Parking Plan (titled "Proposed Parking Plan" dated received in the Coastal Commission's Central Coast District Office on 10/6/2017 (see Exhibit 8)). PRIOR TO CONSTRUCTION, the Permittee shall provide to the Executive Director written evidence that Santa Cruz County has determined that the Permittee has complied with County Conditions II.A-C, II.E.4.a-b, II.E.5, II.E.7, III.C, III.D.4, III.M.1-5, IV.A-B, IV.A-B, V.D, V.E.3, VIII, and IX.
- 2. Deed Restriction.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this

CDP, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this CDP as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description and site plan of the entire parcel or parcels governed by this CDP. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this CDP shall continue to restrict the use and enjoyment of the subject property so long as either this CDP or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

- 3. Conditions Imposed by Local Government.** All conditions of approval imposed on the project by Santa Cruz County pursuant to an authority other than the California Coastal Act remain in effect (see Exhibit 4). In the event of conflict between any such conditions imposed by the County and the terms and conditions of this CDP, the terms and conditions of this CDP shall prevail.

IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT LOCATION

The project is located on the inland side of East Cliff Drive at 23905 East Cliff Drive between 38th Avenue and Larch Lane in the Pleasure Point Area of Live Oak in unincorporated Santa Cruz County. The project site is rectangular with the long side extending inland away from East Cliff Drive. The existing lot is approximately 90 feet by 400 feet and totals some 39,250 square feet. Access to the site is via Moana Way about midway along the inland property line. The site is currently vacant² and lined on three sides by residential development, with the fourth and seaward side fronting East Cliff Drive and ultimately the Pacific Ocean on the other side of East Cliff Drive. The property is designated R-UM (Urban Residential, Medium Density) and zoned RM-4-PP (Multi-Family Residential; at least 4,000 net developable square feet per dwelling unit; Pleasure Point residential design standards overlay).

The site fronts the East Cliff Drive corridor, with its popular recreational access trail that includes several beach and surfing access points, and thus is located at a very popular visitor destination. The promenade trail is part of the California Coastal Trail (CCT) and serves as an important public access amenity to residents and visitors alike, offering views of the Monterey Bay as well as a variety of recreational opportunities including but not limited to surfing, kayaking, boogie boarding, and tide pooling. The project site is located approximately 370 feet upcoast of “The Hook,” a world renowned surf spot, as well as a public parking lot with restrooms and a shower, and a stairway to the beach. The entire length of the East Cliff Drive Parkway in Pleasure Point is an LCP-designated “Primary Public Access Point.” The greater

² This location was historically the site of the Pleasure Point Roadhouse, which had a rich and diverse history. The Roadhouse and associated structures were demolished in the late 2000s.

Pleasure Point area is largely developed and is part of the larger urbanized area of Santa Cruz County.

See **Exhibit 1** for a project location map and **Exhibit 2** for photos of the site.

B. PROJECT DESCRIPTION

The County-approved project authorizes the subdivision of the existing 39,250-square-foot lot into eight residential parcels and the construction of eight single-family homes, along with an interior driveway, parking (18 resident parking spaces and nine guest spaces), and related development. All eight homes would be two stories with three bedrooms and up to three-and-a-half bathrooms, and would range in size from 2,211 square feet to 2,825 square feet. Two of the homes would front East Cliff Drive, and the other six homes would extend inland around the accessway from Moana Way. The project also includes a meandering walkway on the property that would outlet approximately in the center of the property on East Cliff Drive, which would be open and signed for coastal public access, and would provide through access from Moana Way to East Cliff Drive. The project is a “common interest development,” which means ownership and use of the internal roadway, walkways, trash enclosure, and landscaped areas would be shared among the residents.

See **Exhibit 3** for the County-approved project plans.

C. SANTA CRUZ COUNTY APPROVAL

On January 11, 2017, the Santa Cruz County Planning Commission approved County CDP 151204. The Planning Commission’s approval was appealed to the Santa Cruz County Board of Supervisors (Board) by Greg Madsen and John Hunter, two of the current Appellants. On March 14, 2017, the Board denied the appeal and upheld the Planning Commission’s CDP approval. The County’s final local CDP action notice was received in the Coastal Commission’s Central Coast District office on March 16, 2017 (**Exhibit 4**). The Coastal Commission’s ten-working-day appeal period for this action began on March 17, 2017 and concluded at 5pm on March 30, 2017. Three valid appeals of the County’s CDP decision were received during the appeal period (see below and **Exhibit 5**).

D. APPEAL PROCEDURES

Coastal Act Section 30603(a) 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 (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 (Coastal Act Section 30603(a)(5).) The CDP decision on this project is appealable because a subdivision is not the principally permitted use for this zoning district, because the project is located within 300 feet of the beach and within 300 feet of the bluff, and because a portion of the project includes development within the first public road paralleling the sea.

The grounds for appeal under Section 30603(b) 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 must approve a CDP for a project. 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) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. Because the project includes development that is located in the right-of-way of the first public road,³ this additional finding would need to be made if the Commission approves a CDP for the project following a de novo hearing.

The only persons qualified to verbally testify before the Commission on the substantial issue question are the Applicant (or its representatives), persons who made their views known before the local government (or their representatives), and the local government. Testimony from other interested parties regarding substantial issue must be submitted in writing. (California Code of Regulations, Title 14, Section 13117.) Any interested party may testify during the de novo CDP determination of an appeal or submit written comments.

E. SUMMARY OF APPEAL CONTENTIONS

The Appellants contend that the County’s CDP action raises consistency issues with the County’s certified LCP policies and standards related to public access and recreation and the protection of wetlands. Specifically the Appellants contend that: 1) the County-approved project does not provide adequate parking, including because the area is highly congested and serves as a primary public coastal access location; and 2) the County failed to evaluate whether the project site contains a wetland. In addition, one Appellant contends that the property does not have the necessary easement to access Moana Way (i.e., the road serving as the sole vehicular access to the project). See **Exhibit 5** for the full text of the appeals.

F. SUBSTANTIAL ISSUE DETERMINATION

³ In this case a small portion of the proposed project evaluated in the de novo review is in the right-of-way of the first through public road paralleling the sea. Specifically, the new proposed parking plan, the curb realignment, and a small portion of the proposed gravel path are located in the East Cliff Drive public right-of-way, thus triggering the public access and recreation policies of the Coastal Act.

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” (California Code of Regulations (CCR), Title 14, Section 13115(b)). In previous decisions on appeals, the Commission has considered 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, Appellants nevertheless may obtain judicial review of a 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 County’s approval of a CDP for the proposed project presents a substantial issue.

Substantial Issue Analysis

1. Public Access/Recreation

The Coastal Act’s access policies provide significant direction regarding not only protecting public recreational access, but also ensuring that access is provided and maximized. Section 30210 of the Coastal Act requires the Commission to provide the general public maximum access and recreational opportunities. Section 30211 prohibits development from interfering with the public’s right of access to the sea. In approving new development, Section 30212(a) requires new development to provide access from the nearest public roadway to the shoreline and along the coast, save certain limited exceptions, such as existing adequate nearby access. Finally, the Coastal Act Section 30210 direction to maximize access represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect. In other words, it is not enough to simply *provide* access to and along the coast, and not enough to simply *protect* such access; rather such access must also be *maximized*. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction with respect to projects along the California coast that raise public access issues, such as this one. Similarly, the County’s LCP reiterates and amplifies Coastal Act direction, and requires coastal access/recreational opportunities be maximized and incentivizes coastal recreation/public access improvements (including LCP Policies LUP Objective 7.7a Coastal Recreation, LUP Objective 7.7b Shoreline Access, and LUP Policy 7.7.15 Areas Designated for Primary Public Access). The LCP further designates “Primary Public Access Points” where coastal public access and recreational improvements are required to be prioritized and provided, including through path improvements and maintenance; recycling and garbage collection; automobile parking, restrooms, scenic overlooks, and signage. Specifically, LUP Policy 7.7.16 states (in relevant part):

Improvements at Primary Access Points. Provide, encourage provision of, and/or require as a condition of new development approval ... the following improvements at

primary destinations: path improvements and maintenance; recycling, garbage collection; automobile parking, or in an impacted neighborhood, an acceptable alternative such as beach shuttle; bicycle parking; transit service; access provisions for disabled if feasible; restrooms; law enforcement; scenic overlooks if appropriate; safety signs if needed, and identification signs.

See Section G below for the full text of these applicable Coastal Act and LCP provisions.

The subject site is located at one of the LCP-designated “Primary Public Access Points” (i.e., East Cliff Drive/Pleasure Point) and a portion of the proposed project is located within the East Cliff Drive right-of-way. As identified above, the East Cliff Drive corridor at this location in Pleasure Point is a primary visitor destination that includes a segment of the CCT, coastal access stairways, benches, coastal access signage, restrooms, and public parking. The right-of-way at this location fronting the project site has consistently provided public parking for coastal access/recreational visitors as part of the East Cliff Drive Parkway project. The County-approved project entails painting the curb red in the area of an existing fire hydrant (an approximate curb length of 15 feet) and the construction of a boardwalk outlet/curb-cut in the center of the property line along East Cliff Drive. The red curb coupled with the positioning of the boardwalk/curb-cut would appear to result in the reduction of most, if not all, of the existing public parking along East Cliff Drive at this location. The Coastal Act and the LCP require that public access and recreational opportunities be maximized, and the LCP encourages/requires new development projects at LCP-designated “Primary Public Access Points” to improve existing coastal recreational amenities. Because the County-approved project would appear to result in a net reduction of public parking in this area (instead of the LCP encouraged/required improved parking and/or other public access and recreation amenities), the approval raises substantial LCP consistency related questions with respect to public access and recreation.

2. Wetlands

The LCP provides for the protection of wetlands through a variety of means, including through required studies and assessments as part of the CDP application process. In this case, despite an assessment that noted that “water is often perched above the clay layer at times creating a vernal water surface in the winter months” (see page 185 of Appendix A), the County did not further investigate nor conclude on whether wetlands were present on this site. Because the County did not consider whether the site contained a wetland and if so, what restrictions that might place on development, the approval raises a substantial issue question related to the wetland protection.

3. The Five Substantial Issue Factors

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over a de novo CDP application for such development. At this stage, the Commission has the discretion to find that 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 local government; the significance of the coastal resources affected by the decision; the precedential value of the decision for future interpretations of its LCP; and,

whether the appeal raises only local issues as opposed to those of regional or statewide significance.

The County-approved project raises substantial conformance issues for the reasons identified above. First, in terms of the degree of factual and legal support for the County's decision, the County did not include a wetland determination and thus there is no factual or legal support for any required wetland buffers or protection. With respect to public access and parking, the County-approved project appears to have significant adverse impacts on both, contrary to LCP legal requirements. This factor supports a finding of substantial issue. Second, with respect to the extent and scope of the development approved by the County, the County-approved development entails a subdivision of a vacant 39,250-square-foot lot into eight separate parcels, which would result in eight residential units. This vacant lot is one of the last few remaining oceanfront vacant lots in Pleasure Point (and in urbanized Santa Cruz County), and the subdivision of one existing lot into eight separate lots is significant. Thus, this factor supports a finding of substantial issue. Third, with respect to the significance of the coastal resources affected by the decision, the impacts to coastal resources (e.g. public access and recreation) are potentially significant given that the project would result in a reduction of public parking in an LCP-designated "Primary Public Access Point" and a heavily used area for residents and tourists. Furthermore, the uncertainty of whether wetlands are extant onsite in and of itself is significant considering the importance of wetlands as a coastal resource. This factor supports a finding of substantial issue. Fourth, in terms of the precedential value of the County's decision for future interpretations of the LCP, the County's acquiescence of the project's elimination of public parking in an LCP-designated "Primary Public Access Point" could have adverse precedential impacts on interpretation of the public access and parking policies in the LCP for similar future development projects located in such defined "Primary Public Access Points." In other words, because the County-approved project entails the elimination of existing public parking despite its location in an LCP-designated "Primary Public Access Point" (whereby public access improvements are encouraged and/or required), future projects in LCP-designated "Primary Public Access Points" may be evaluated through the same lens (i.e., that new development within "Primary Public Access Points" need not actually provide public access improvements and amenities as encouraged/required by the LCP). Furthermore, the County's failure to consider whether wetlands are extant onsite prior to project approval could have adverse precedential impacts on application of the wetland policies in the LCP for similar future development projects that potentially implicate wetlands issues. This factor supports a finding of substantial issue. Finally, with respect to whether the appeal raises only local issues or issues of regional/statewide significance, the elimination of public parking in such a heavily impacted "Primary Public Access Point" as designated in the LCP raises potentially significant regional and statewide concerns in this particular case. This is because Pleasure Point is a heavily sought-after destination in Santa Cruz (as embodied in its Primary Public Access Point LCP designation), and the loss of *any* parking is significant and may have far-reaching consequences ranging from frustration among residents/visitors who frequent Pleasure Point, to the loss of potential revenue to local businesses from an inability for their patrons to park). This factor supports a finding of substantial issue. These five factors when taken together raise substantial conformance issues with respect to the LCP's protection of wetlands, as well as the LCP's and Coastal Act's protection of public access/recreation. Therefore, the Commission finds that a **substantial issue** exists with respect to the County-approved project's conformance with the

provisions of the certified Santa Cruz County LCP and the Coastal Act's access policies, and takes jurisdiction over the CDP application for the project.

G. COASTAL DEVELOPMENT PERMIT DETERMINATION

The standard of review for this CDP determination is the Santa Cruz County certified LCP and, for that portion of the project located in the East Cliff Drive right-of-way, the Coastal Act's access and recreation policies. All Substantial Issue Determination findings above are incorporated herein by reference.

1. Public Access/Recreation

The Coastal Act and the LCP require public access and recreational opportunities be maximized to and along the coast. Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." Therefore, because a portion of the proposed project is located in the public right-of-way of the first public road paralleling the sea, this additional finding must be made. In addition to prioritizing coastal recreation/public access improvements, the LCP also designates "Primary Public Access Points" where such improvements should be directed and focused. In addition, the LCP encourages and/or requires new development projects at "Primary Public Access Points" to include coastal public access/recreational improvements. Finally, the LCP also directs the Board of Supervisors, Planning Department, County Parks, and Public Works Department to improve coastal parking including through the creation of new parking and striping existing parking areas. Applicable Coastal Act sections and LCP provisions include:

***Coastal Act Section 30210:** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

***Coastal Act Section 30211:** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

***Coastal Act Section 30212(a):** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: ... (2) Adequate access exists nearby...*

LUP Objective 7.7a Coastal Recreation

To maximize public use and enjoyment of coastal recreation resources for all people, including those with disabilities, while protecting those resources from the adverse impacts of overuse.

LUP Objective 7.7b Shoreline Access

To provide a system of shoreline access to the coast with adequate improvements to serve the general public and the coastal neighborhoods which is consistent with the California Coastal Act, meets public safety needs, protects natural resource areas from overuse, protects public rights and the rights of private property owners, minimizes conflicts with adjacent land uses, and does not adversely affect agriculture, subject to policy 7.6.2.

LUP Policy 7.7.4 Maintaining Recreation Oriented Uses

Protect the coastal bluff top areas and beaches from intrusion by non-recreational structures and incompatible uses to the extent legally possible without impairing the constitutional rights of the property owner, subject to policy 7.6.2.

LUP Program 7.7a

Improve existing parking areas through the use of fencing, striping, landscaping, bike racks, and safety improvements; provide safe stairways for beach access as part of the program to upgrade vehicular parking. (Responsibility: Public Works, Board of Supervisors)

LUP Program 7.7b

Increase parking opportunities to serve visitors to the Live Oak coastline in locations where such facilities are feasible and compatible with the neighborhood and the natural setting. Provide on-and-off-street parking improvements and facilities within walking distance of the beaches and bluffs, or located at more remote locations and linked by shuttle transportation. Identify appropriate locations and improvements in cooperation with the local community. (Responsibility: Board of Supervisors, Planning Department, County Parks, Public Works)

LUP Policy 7.7.14 Primary Public Access Points

Primary public access points shall be developed only when they can provide automobile parking or an acceptable alternative, and when all environmental impacts and use conflicts can be satisfactorily mitigated, subject to policy 7.6.2.

LUP Policy 7.7.15 Areas Designated for Primary Public Access (in relevant part)

*The following are designated as primary public access, subject to policy 7.6.2*⁴:*

⁴ LUP Policy 7.6.2 Trail Easements reads as follows; “Obtain trail easements by encouraging private donation of land, by public purchase, or by the dedication of trail easements, in full compliance with California Government Code Section 65909(a) for development permits and Government Code Sections 66475.4(b) and 66478.1 et seq. for land divisions, provided that state and federal constitutional rights of landowners are not violated. Within urban areas, obtain trail easement dedication within the specified buffer areas adjacent to riparian corridors and wetlands, and/or within the riparian corridor, subject to the above requirements, when consistent with the Riparian Corridor Protection ordinance and all other policies and ordinances protecting sensitive habitats. Any trail easements so obtained shall not be put on any published trail maps until a complete trail from beginning to end has been obtained legally from the respective property owners, and only after adequate funds exist to implement a trail maintenance plan, providing for security measures, fire protection, erosion control, trail rules enforcement, and similar areas of concern. Notwithstanding the foregoing, it is the policy of Santa Cruz County to accept offers to dedicate coastal access, complete, open, and maintain or assist other public agencies or private non-profit groups to complete, open, and maintain coastal accessways between the first public road and the shoreline as soon as it is feasible. This policy is not intended and shall not be construed as authorizing the exercise of the County’s regulatory power in a manner which will take or damage private property for public use without the payment of just compensation in violation of the Constitution of the State of California or of the United States. (See California Public Resource Code Section 30010).”

... Live Oak*Pleasure Point/East Cliff Drive**End of 41st Avenue...***LUP Policy 7.7.16 Improvements at Primary Access Points**

Provide, encourage provision of, and/or require as a condition of new development approval, subject to policy 7.6.2, the following improvements at primary destinations: path improvements and maintenance; recycling, garbage collection; automobile parking, or in an impacted neighborhood, an acceptable alternative such as beach shuttle; bicycle parking; transit service; access provisions for disabled if feasible; restrooms; law enforcement; scenic overlooks if appropriate; safety signs if needed, and identification signs.

Consistency Analysis

On de novo review, the Applicant has agreed to modify the project to include formalizing (i.e., striping) the five public parking spaces in the right-of-way along East Cliff Drive (see **Exhibit 8** for the Applicant's proposed parking plan). The Applicant's new proposal would formalize and maximize the existing public parking area rather than eliminating parking as proposed under the County-approved project. Because the existing curb is aligned such that some of the public right-of-way extends inland of the curb line, the right-of-way is relatively narrow. As a way of resolving the project's inconsistencies with the LCP's/Coastal Act's public access/recreation provisions, the Applicant has proposed to realign the curb to use more of the public right-of-way for public parking, resulting in an increased parking width. In other words, the proposed project on de novo maximizes the public right-of-way for public parking use. In addition to realigning the curb, the Applicant has also coordinated with Santa Cruz Central Fire District to relocate the fire hydrant into the right-of-way immediately upcoast (where there is no parking currently), which will allow for the public right-of-way along the entire width of the Applicant's property to be used for public parking. The proposed project therefore maintains the existing five public spaces and also increases the size (including length and width) of each space. The revised parking configuration is therefore consistent with the LCP's/Coastal Act's requirements to maximize public access including LUP Policy 7.7.16, which encourages/requires new development in "Primary Public Access Points" to include public access benefits including through improved parking. Finally, the revised project also includes public access paths including: 1) the retention of the boardwalk feature that provides through public access from Moana Way to East Cliff Drive (and includes standard Coastal Access signage⁵); and 2) the Applicant's proposal to construct a gravel public path along East Cliff Drive that will be available for public use. These improvements are codified in **Special Condition 1**.

Therefore, as conditioned, the revised project is consistent with the above-cited Coastal Act and LCP provisions regarding maximizing public access/recreational opportunities, including in LCP-designated "Primary Public Access Points." Thus, the project as conditioned is consistent with Coastal Act and LCP public access and recreation requirements.

⁵ Through public access from Moana Way to East Cliff Drive was a condition imposed by the Planning Commission at the hearing on January 11, 2017. This condition was subsequently retained by the Board of Supervisors when they upheld the Planning Commission's approval of the project.

2. Wetlands

The LCP requires that wetlands be identified and, where identified, provides a series of different prescriptions depending on wetland type and related characteristics. Applicable LCP provisions include:

LUP Objective 5.2 Riparian Corridors and Wetlands

To preserve, protect and restore all riparian corridors and wetlands for the protection of wildlife and aquatic habitat, water quality, erosion control, open space, aesthetic and recreational values and the conveyance and storage of flood waters.

LUP Policy 5.2.1 Designation of Riparian Corridors and Wetlands

...

Designate and define the following areas as Wetlands: Transitional areas between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is covered by shallow water periodically or permanently. Examples of wetlands are saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps mudflats, and fens. The US Army Corps of Engineers, and other federal agencies utilize a “unified methodology” which defines wetlands as “those areas meeting certain criteria for hydrology, vegetation, and soils.”

LUP Policy 5.2.5 Setbacks from Wetlands

Prohibit development within the 100 foot riparian corridor of all wetlands. Allow exceptions to this setback only where consistent with the Riparian Corridor and Wetlands Protection ordinance, and in all cases, maximize distance between proposed structures and wetlands. Require measures to prevent water quality degradation from adjacent land uses, as outlined in the Water Resources section.

LUP Policy 5.2.10 Development in Wetland Drainage Basins

Require development projects in wetland drainage basins to include drainage facilities or Best Management Practices (BMPs) which will maintain surface runoff patterns and water quality, unless a wetland management plan specifies otherwise, and minimize erosion, sedimentation, and introduction of pollutants.

The LCP is therefore highly protective of wetlands, including through requiring a minimum development setback of 100 feet from wetlands and outlining detailed procedures for wetland delineation. That being said, the LCP also provides a series of exceptions to such requirements, including for wetlands categorized as “wetland drainage basins” as described in LUP Policy 5.2.10.

As discussed above, despite indications that wetlands might be present at this site, the County did not conclude on this point, and a wetland delineation was not a part of the County record in its approval of this project. As a result, Commission staff requested that the Applicant provide additional wetland delineation and related materials (see **Exhibit 6** for the Applicant’s wetland report). The Applicant’s wetland delineation report concluded that wetlands were not present on the site.

However, Commission Staff Ecologist Dr. Laurie Koteen reviewed the wetland report and the associated data sheets and ultimately concluded that a portion of the site (a “depression” near the rear of the site) did delineate as a wetland feature (see **Exhibit 6**). Specifically, Dr. Koteen found that at all but one sampling location, the vegetation wetland parameter was satisfied. She also found that redox features⁶ may exist, and that the wetland hydrology parameter also appeared to be satisfied. Therefore, Dr. Koteen concluded that a small portion of the project constituted a wetland feature. However, Dr. Koteen did concur with the Applicant that the wetland feature lacks rare or endangered plant species, that the water retention area lacks any ecological significance, and that it was a man-made feature created to manage surface water runoff. She thus agreed that the wetland feature can be considered a “wetland drainage basin” per LUP Policy 5.2.10.

As indicated above, the LCP provides certain exceptions to wetland standards in specific circumstances that have been found to occur on this property. In this case, according to written and photo documentation provided by the Applicant and concurred by Dr. Koteen, the wetland area is part of a created drainage basin that was used by the County as part of their storage and staging area during construction of the East Cliff Drive parkway project in 2010 to prevent drainage onto neighboring properties (see **Exhibit 7**). Moreover, subsequent to its original use during the period of construction, the wetland retention area was maintained for drainage purposes, with regular mowing. These types of basins are understood in this LCP as “wetland drainage basins” pursuant to LUP Policy 5.2.10. Development is allowed in such basins if the project includes appropriate drainage Best Management Practices (BMPs) and minimizes erosion, sedimentation, and the introduction of pollutants. In this case, the County is requiring⁷ the project to include a series of requirements to protect coastal resources, including the wetland drainage basin by requiring a variety of BMPs including a drainage system that includes permeable surfaces, drain inlets with pollutant controls, and perimeter drainage treatment swales. **Special Condition 1** of this approval thus incorporates these applicable County conditions as enforceable components of this CDP, including requiring a detailed erosion control plan (including requirements for silt and grease traps, and an effective sediment barrier along the perimeter of the site). This CDP approval is therefore conditioned to ensure consistency with LCP requirements, including with respect to the wetland drainage basin, water quality, and other coastal resources.⁸ Therefore, the project as conditioned meets the LCP’s requirements, including for wetland drainage basins.

⁶ “Redox” refers to reduction and oxidation reactions, and includes all chemical reactions in which atoms have their oxidation state changed. Generally, redox reactions involve the transfer of electrons between chemical species. When reduction and oxidation reactions occur in soil, it is an indication that the soil has undergone conditions of prolonged saturation, and is evident by regions within the soil medium that have changed in color.

⁷ The County included a series of requirements and conditions on this project pursuant to authorities other than the Coastal Act, including the Subdivision Map Act. These conditions remain in effect, and in case of any conflict between any such conditions imposed by the County and the terms and conditions of this CDP, the terms and conditions of this CDP shall prevail (see **Special Condition 3**).

⁸ **Special Condition 2** requires a deed restriction to be recorded against the properties involved in the application to ensure that future property owners are properly informed of the terms and conditions of the approval. The deed restriction will record the conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property.

In summary, the project as conditioned meets applicable LCP policies and standards related to public access and recreation, wetland drainage basin protection, and water quality, and includes appropriate conditions (including through review and approval of appropriate County conditions) to ensure coastal resources are protected consistent with the LCP.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096(a) of Title 14 of the California Code of Regulations requires that a specific finding be made in conjunction with CDP applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

Santa Cruz County, acting as the CEQA lead agency, adopted a Mitigated Negative Declaration for the proposed project on March 14, 2017, finding that the project, with its incorporated mitigations, would not have a significant effect on the environment. The Coastal Commission's review and analysis of CDP applications has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA (14 CCR Section 15251(c)). The preceding CDP findings discuss the relevant coastal resource issues with the proposal, and the CDP conditions identify appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

- County's Complete Final Action Notice for CDP 151205

APPENDIX B: STAFF CONTACT WITH AGENCIES AND GROUPS

- None