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49th Day: Waived
Staff: Mike Watson - SC
Staff Report: 9/21/2018
Hearing Date: 10/12/2018

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal Number: A-3-CML-18-0050

Applicant: City of Carmel-by-the-Sea

Appellant: Lynn Ross

Local Government: City of Carmel-by-the-Sea

Local Decision: Coastal development permit (CDP) amendment application number 18-231 approved by the Carmel-by-the-Sea City Council on July 3, 2018.

Location: Carmel Beach between 10th Avenue and Martin Way in the City of Carmel-by-the-Sea, Monterey County.

Project Description: Modifications to the City's existing Beach Fire Management Pilot Program to extend the term of the Program until November 30, 2020, and to implement a new smokeless fire ring technology, a reduced Program area, and air quality monitoring.

Staff Recommendation: No Substantial Issue

Important Hearing Procedure Note: This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to three minutes total per side. Please plan your testimony accordingly. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify.

Others may submit comments in writing. If the Commission determines that the appeal does raise 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 City of Carmel-by-the-Sea approved modifications to its existing 2016 Beach Fire Management Pilot Program (Program) for Carmel Beach. As approved in 2016, the Program authorizes the placement of 12 wood-fueled fire ring devices on the beach between Eighth Avenue and Martin Way between March and November every year. In addition, the 2016 Program required all wood fires to be contained in a City-provided fire ring, established a 75-foot setback from the toe of the bluff for operation of a fire ring, restricted wood fires to the hours of 4 p.m. to 10 p.m. only, and provided a test period for propane devices on the beach. At the end of the three-year Program period (i.e., on June 30, 2019), the City would then evaluate the success of the Program in terms of how well it protected coastal resources, public safety, and air quality while providing intended historical recreational opportunities.

The City's current action extends the term of the Program until November 30, 2020, which would allow for the implementation and evaluation of Program elements across two complete additional Program periods (i.e., from March through November in both 2019 and 2020), which is necessary because implementation of the Program was delayed in 2016 by the Soberanes wildfire and in late 2016 and early 2017 due to significant fall, winter, and spring storms. The approved project also includes modifications to the Program that: 1) require use of new smokeless wood fire ring devices (which the City will provide); 2) reduces the boundary of the Program area from Eighth Avenue to Tenth Avenue, and; 3) introduces air quality monitoring in conjunction with the Monterey Bay Air Resources District.

The Appellant contends that the City-approved changes to the Program are inconsistent with Carmel-by-the Sea Local Coastal Program (LCP) policies related to maximizing public access while protecting public safety. The Appellant also contends that the modified Program does not: protect sensitive marine resources, air quality, respect the neighborhood, or recognize that there are feasible alternatives to wood-burning fires.

With regard to the extension of the term of the Program from June 30, 2019 to November 30, 2020, this extension will allow for the City to collect more information on how the Program is working with respect to the protection of coastal resources including public access, public safety, and air quality. With respect to maximizing access and addressing public safety and health concerns, the Program, as modified, further addresses these concerns, especially for those with a high sensitivity to smoke, by employing the use of "smokeless" wood fire ring devices. The City's approval includes replacing the standard beach fire cauldrons with special devices that utilize a secondary combustion process designed to reduce the amount of smoke and particulate matter emanating from beach fires. This in turn will allow a greater segment of the public to utilize the beach and the Scenic Road recreational blufftop path during the hours when beach fires are allowed under the Program without being as significantly exposed to the externalities of beach fires (as compared to the previously-approved wood-burning fire rings). In terms of

providing a balance of uses, the City-approved Program boundary modification strikes a greater balance between coastal access and public safety because the approved modification reduces the boundary of the Program from Eighth Avenue to Tenth Avenue (i.e., two city blocks or approximately 1,000 linear feet) and ensures that nearly three-quarters of the Carmel Beach frontage will be available to the general public without the presence of beach fires. The Program modifications also address the Appellant's concerns regarding neighborhood compatibility by including monitoring of air quality via the installation of three air quality units in locations adjacent to the beach fire Program area. Monitoring will ensure, through data collection and appropriate responses to that data, that any future adaptations adopted by the City in conjunction with the Program will better achieve conformance with LCP requirements for maximizing access (including with respect to opportunities for recreational beach fires), while addressing public health and safety concerns, protecting natural resources (including air and water quality),¹ and respecting the local neighborhood environment. Lastly, regarding the Appellant's claim of feasible alternatives to wood-fueled fire, including the use of propane, there are a host of economic, safety, and unresolved logistical questions about the programmatic use of propane including with regard to operations, maintenance, costs, security, safety, etc., all of which could result in significant impediments to the use and enjoyment of recreational beach fires as the standard beach fire device allowable under the Program, inconsistent with the LCP. Nevertheless, the existing Program in place (which is the baseline condition) authorizes the use of *user-supplied* propane fueled devices as a means for the City to gather data about their use.

In sum, the certified LCP specifically provides for beach fires along Carmel Beach and the City's modifications to the Program will continue to ensure that beach fires will occur in a manner that maximizes public recreational access while simultaneously enhancing public safety, protecting coastal resources (i.e., air and water quality), and respecting the character of the surrounding neighborhood. In fact, the modifications to the Program as approved that are the subject of this appeal are meant to specifically address the types of concerns raised by the Appellant. In other words, the coastal resource issues raised by the Appellant with respect to the City's approval of the Program amendment are not substantial because the City approved the Program amendment as designed in order to address the very types of concerns raised by the Appellant *relative to the existing Program*. Accordingly, the modified Program does not raise substantial issues with respect to the provisions of the LCP because it maximizes access and opportunities for public recreation while enhancing public safety and being sensitive to coastal resources, including with regard to air and water quality.

As a result, Commission staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP conformance issue, and that the Commission decline to take jurisdiction over the CDP for this project. The single motion necessary to implement this recommendation is found on page 5 below.

¹ Regarding water quality, the Program approved in 2016 required all fires to be located in fire rings, i.e. fires are no longer allowed to be placed directly on the beach sand. As part of the 2016 approval, City staff is required to regularly maintain and clean the fire rings and remove the ash debris to an appropriate offsite location. Thus, ash debris related to beach fires on Carmel Beach no longer enters Carmel Bay or Sanctuary waters. The City-approved modifications to the Program, which are the subject of this appeal, made no changes to the ban on fires directly on beach sand or to the City's fire ring maintenance requirements.

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Appendix A – Substantive File Documents

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EXHIBITS

Exhibit 1 – Project Location Maps

Exhibit 2 – Project Site Photos

Exhibit 3 – City’s Final Local Action Notice

Exhibit 4 – Appeal of City of Carmel-by-the-Sea CDP Amendment Decision

Exhibit 5 – Photos of the “Smokeless” Fire Devices

I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission will not hear the application de novo and that the local action will become final and effective. To implement this recommendation, staff recommends a **YES** vote on the following motion. 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 an affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-CML-18-0050 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603. I recommend a yes vote.*

***Resolution to Find No Substantial Issue.** The Commission finds that Appeal Number A-3-CML-18-0050 does not present 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 Plan and/or the public access and recreation policies of the Coastal Act.*

II. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION

The approved project is located within the City of Carmel-by-the-Sea at Carmel Beach. The City is located on the southern edge of the Monterey Peninsula and fronts Carmel Bay and the world-renowned white sandy beach running along its entire, approximate one-mile length. Above the beach is the Scenic Road trail system, which is a unique public pathway experience that is defined in part by the undulating bluffs, Monterey cypress landscape canopy, and scenic views of Carmel Beach and beyond. Together Carmel Beach, the blufftop trail, Scenic Road, and extraordinary vistas combine to form a world-renowned, popular, and visually striking visitor serving destination.

Carmel Beach itself is a significant local and regional beach access destination. Its wide expanse of white sand extends along a mile of the City's shoreline, and attracts beach visitors from far and wide who come to walk and play on the beach and in the ocean waves offshore. Many beachgoers also come to sit around a beach fire in the evening. These beach fires have long been a part of both the cultural fabric and recreational utility associated with Carmel Beach, and are called out as an important part of the beach recreational experience here in the City's Local Coastal Program (LCP). Per the LCP, beach fires are only allowed on the beach south of Tenth Avenue, or about one-third the lineal distance of the beach.

The City-approved permit modifications affect the portion of the beach that is located seaward of Scenic Road and between Tenth Avenue and Martin Way. The entire beach is designated by the LCP as Open Space/Recreation and is intended to serve the needs of residents and the public including via provision of passive and active recreational access opportunities, such as beach fires. See **Exhibit 1** for location maps and **Exhibit 2** for site photos.

B. PROJECT BACKGROUND AND HISTORY

Beach fires are a part of the historic fabric of Carmel. Their origins stem from the earliest days in the village with writers and artists enjoying fires and cookouts on the beach and upper dunes. Beach fires have historically been unmanaged and have taken place directly on the white sand. However, in recent years the City has taken steps to preserve the unique qualities of the beach and adjacent bluffs and dunes. In 1995, in response to perceived discoloration of the upper dunes' characteristically white sands, the City passed an ordinance banning fires north of Tenth Avenue and prohibiting fires within 25 feet of the bluff. Additional regulations regarding the size and height of a fire and a prohibition on the use of flammable liquids for beach fires also went into effect during this time. These provisions were made a part of the LCP when it was certified in 2004.

Prior to summer 2016, beach fires were allowed directly on the sand and there was no limit on the number of fires that could take place at any one time on the beach. It was not uncommon to observe upwards of 45 beach fires during peak weekend periods in the summer and fall.² The City and its residents became concerned about the large numbers of beach fires, specifically with respect to discoloration of the beach's white sands, public safety, and possible health effects from smoke.

On April 8, 2015, citing the need to get a handle on the issues associated with unmanaged fires on Carmel Beach, the City approved a CDP for a Beach Fire Management Pilot Program (Program). The Program included the broad elements of beach fire management, including authorization of 26 City-supplied wood fire rings, maintenance provisions, signage requirements, and conceptual standards by which to evaluate the effectiveness of the Program. The City's CDP decision was appealed to the Commission (Commission Appeal No. A-3-CML-15-0033), with the Appellant alleging LCP conformance issues with respect to coastal hazards, public safety, public access and recreation, air and water quality, public views, and community character. However, after the City's approval of the Program but before the appeal of the Program was heard by the Commission, the City instituted an "emergency" prohibition on beach fires on weekends and holidays. The City then issued an emergency CDP and adopted an urgency ordinance declaring beach fires a public nuisance and banning beach fires altogether. While the appeal of the City-approved Program was pending at the Commission, the City proposed modifications to the Program to prohibit wood beach fires, but to allow propane fires on Carmel Beach. The City's revised proposal would have provided for six City-provided propane-fueled fire rings in the area between Tenth Avenue and Martin Way along the beach,³ and unlimited propane fires south of Tenth Avenue on the beach for propane rings provided privately by beachgoers. Fires would only be allowed in the City-provided fire rings from one hour before

² The 2015 July 4th holiday, which occurred on a Saturday, saw upwards of 130 beach fires, according to the City.

³ The City's revised Program proposed that the City would install six propane fire rings on the beach. However, other elements of the Program were not clearly defined, including who would supply the propane lines and propane tanks for these six fire rings (the City or beachgoers) and whether these components would be placed on top of or under the sand. It was also unclear whether the City would provide propane for these six fire rings for free or for a fee or if beachgoers would need to bring their own propane for use in the City-owned propane fire rings.

sunset to 10 p.m., while fires would be allowed in beachgoer-provided propane fire rings from 7 a.m. to 10 p.m.

Regarding the appeal, at its December 11, 2015 hearing, the Commission found substantial issue with regard to the Program's conformance with the certified LCP, but then also acted to deny the project on de novo review.⁴ The Commission was swayed by residents' concerns regarding the health effects of smoke emanating from wood beach fires, yet also understood Commission staff's concerns that the propane-only proposal would impede recreational uses allowed under the LCP. Rather than attempt to modify the proposal at the hearing, the Commission chose instead to direct Commission staff and City staff to continue to work together to find a mutually acceptable solution to the identified concerns.

In the ensuing months, Commission and City staff worked collaboratively to develop a Program that addressed the effects of allowance of beach fires on air and water quality, public safety, and the quality of Carmel's white sand beach. These efforts culminated in the City's June 30, 2016 approval of a revised three-year Beach Fire Management Pilot Program, which, among other things, appropriately addressed identified concerns by: 1) limiting the number of beach fires to a maximum of 12 wood fires throughout the Program area versus unlimited wood fires before Program implementation; 2) requiring all wood fires to be contained in a City-provided fire ring to increase public safety and to eliminate the degradation of sand quality; 3) expanding the Program area to Eighth Avenue to further increase separation between individual fire rings and to aid in the dispersal of wood smoke and other fire-related impacts (e.g., noise, etc.); 4) requiring at least 75 feet between each fire ring and a setback of 75 feet from the Scenic Road recreation path, to reduce the effects of wood smoke on pathway users; 5) restricting wood fires to the hours of 4 p.m. to 10 p.m. only; and 6) providing a test period for propane devices on the beach to allow a cleaner-burning option for beach fires and to also allow for cooking of food on the beach. At the end of the three-year Program period, the City would then evaluate the success of the Program in terms of how well it protected coastal resources, public safety, and air quality. Commission staff and City staff agreed that the Program, as modified, would be consistent with both the LCP and the Coastal Act. *The City's approval of the 2016 Program was not appealed to the Commission.*

Implementation of the Program in the summer and fall of 2016 was delayed by the large-scale Soberanes wildfire in nearby Big Sur. Air quality in the Carmel area basin was very poor due to the wildfire and the Monterey Bay Air Resources District issued a "no-burn" order for all residential and commercial fireplaces, beach fires, and other non-essential fires. As such, the City was not able to implement and evaluate the Program during this time period. During the following fall/winter and spring months (i.e., late 2016 through early 2017), prolonged rains and large storm-driven swells denuded Carmel Beach of its typical beach profile (i.e., the beach became very narrow), and fire rings could not be placed on the beach because the Program's 75-foot setback requirements from the toe of the bluff could not be met. The 2017 summer beach sand profile was slow to recover, which again prevented full implementation of the Program. A

⁴ On de novo review, Commission staff was recommending approval of the 26 wood fire rings, with additional requirements including, but not limited to, fire ring management and maintenance, and air quality monitoring and reporting. At the de novo hearing, the City was requesting approval of a propane-only beach fire program. The Commission denied both these options.

fairly mild 2017 winter / 2018 spring allowed the City for the first time to fully implement the Program throughout the Program's operational period.⁵ Thus, in the last two-plus years, the City has only been able to collect data on one almost complete Program period (2018) and only a small portion of the Program period in 2017.

C. CITY OF CARMEL-BY-THE-SEA CDP APPROVAL

On July 3, 2018, the Carmel-by-the-Sea City Council approved a CDP to modify the Program. The City's Final Local Action Notice was received in the Coastal Commission's Central Coast District Office on Monday July 9, 2018. The Coastal Commission's ten-working-day appeal period for this action began on Tuesday July 10, 2018 and concluded at 5 p.m. on Monday July 23, 2018. One valid appeal (see below) was received during the appeal period. See **Exhibit 3** for the City's Final Local Action Notice.

D. PROJECT DESCRIPTION

The City's 2016 approval of the Program authorized the Program for three years, i.e., until June 30, 2019. The City's current action extends the Program until November 30, 2020, which would allow for the implementation and evaluation of Program elements across two complete additional Program periods (i.e., from March through November in both 2019 and 2020). The approved project also includes modifications to the Program that: 1) require use of new smokeless wood fire ring devices (which the City will provide); 2) reduce the boundary of the program area from Eighth Avenue to Tenth Avenue, and; 3) introduce air quality monitoring in conjunction with the Monterey Bay Air Resources District.

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. (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).) This project is appealable because it is located between the first public road and the sea, and because it is located within 300 feet of the beach and the 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)(2) of the Coastal Act requires the Commission to consider a CDP for an appealed

⁵ Per the approved Program, fire rings may be placed on the beach from March through November each year, weather permitting. The fire rings were placed on the beach in March 2018 and remain in place as of the date of this report.

project de novo unless a majority of the Commission finds that “no substantial issue” is raised by such allegations.⁶ Under Section 30604(b), if the Commission conducts the de novo portion of an appeals hearing (upon making a determination of “substantial issue”) and finds that the proposed development is in conformity with the certified LCP, the Commission must issue 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) 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. This project is located between the nearest public road and the sea and thus this additional finding would need to be made (in addition to a finding that the proposed development is in conformity with the City of Carmel-by-the-Sea LCP) if the Commission were to approve the project following the de novo portion of the hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons opposed to the project who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding the substantial issue question must be submitted in writing. (California Code of Regulations, Title 14, Section 13117.) Any person may testify during the de novo CDP determination stage of an appeal (if applicable).

F. SUMMARY OF APPEAL CONTENTIONS

The Appellant contends that the City-approved CDP raises LCP consistency questions with respect to maximizing public access and safety, and air and water quality policies. Specifically, the Appellant contends that the continued implementation of the Program, as modified: 1) should be denied because wood smoke is harmful to human health; 2) does not maximize public access because it exposes beachgoers to smoke and health hazards; 3) does not provide a balance between coastal access and public safety; 4) does not protect Carmel Bay and the Monterey Bay National Marine Sanctuary (Sanctuary); 5) fails to respect the neighborhood; and 6) does not recognize that there are feasible alternatives to wood-burning fires (i.e., propane fires). Please see **Exhibit 4** for the appeal contentions.

G. SUBSTANTIAL ISSUE DETERMINATION – PUBLIC ACCESS

Appellant’s Contentions

The Appellant contends that the approved CDP raises LCP consistency questions relating to maximizing public access to, and recreational use of, the shoreline because the approved Program continues to authorize wood burning along the Carmel Beach shoreline, which produces smoke that is harmful to the health of beachgoers, Scenic Road recreation trail users, and residents of the adjacent neighborhood. The Appellant also contends that the modified Program

⁶ The term “substantial issue” is not defined in the Coastal Act or in its implementing regulations. In previous decisions on appeals, the Commission has considered the following factors in making substantial issue determinations: 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 local government’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. Even when the Commission chooses not to hear an appeal (by finding no substantial issue), appellants nevertheless may obtain judicial review of a local government’s CDP decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, Section 1094.5.

does not provide a balance between coastal access and public safety because the smoke from beach fires prevents people from walking along the Scenic Road pedestrian path or the beach. The Appellant further contends that the modified Program does not protect the coastal waters of Carmel Bay and the Sanctuary. And finally, the Appellant contends that the Program is inconsistent with the LCP because there are feasible alternatives to wood-burning beach fires, namely propane, and that the use of propane would eliminate smoke altogether and the potential health effects associated with it.

Applicable LCP Provisions

Coastal Act Section 30603(b)(1) states, in relevant part, that the grounds for appeal shall be limited to an allegation that the development does not conform to the standards set forth in the certified LCP. Among the most important goals and requirements of the LCP is the mandate to protect, provide, enhance, and maximize public access and recreational access opportunities to, and recreational use of, the coast and shoreline consistent with strong resource conservation principles. These requirements are spelled out in the City's certified Land Use Plan (LUP) together with specific protections for the provision of recreational beach fires on Carmel Beach through the City's certified Implementation Plan. The LCP also emphasizes the protection of existing and the provision of new lower-cost recreational facilities.

The City's LUP policies specifically encourage and protect lower-cost public access and recreational opportunities, including beach fires on Carmel Beach:

***LUP Policy G4-1.** Provide for maximum public access to, and recreational use of, the shoreline consistent with private property rights and environmental protection.*

***LUP Policy P4-7.** Protect the public's historic right of unrestricted access to the entire beach in Carmel-by-the-Sea from the southern to the northern city limit by prohibiting development that interferes with such rights and by actively defending established prescriptive rights. ...*

***LUP Policy G4-3.** Provide adequate facilities that will serve the needs of the public, mitigate damage to the environment, and respect the neighborhood.*

***LUP Policy G4-4.** Provide for a wide variety of passive and active recreational experiences for all beach users while protecting the resource values of the beach environs.*

***LUP Policy O4-9.** Manage the City's beach, park, and open space resources in a manner to encourage use and enjoyment by residents and visitors.*

***LUP Policy O4-10.** Allow beach users the opportunity to enjoy a fire for warmth or cooking, while protecting the sand from degradation.*

***LUP Policy P4-57.** Allow beach fires until 10:00 p.m. south of Tenth Avenue but at least twenty five feet from the base of the bluff. Install appropriate signage to indicate this distance and time limit and to indicate methods for correct extinguishing of fires with water.*

***LUP Policy P4-62.** Lower cost visitor and recreational facilities shall be protected and encouraged and where feasible, provided. Developments providing public recreational*

opportunities are preferred.

The Coastal Implementation Plan (IP) further augments the LUP and more specifically identifies the standards and guidelines for lighting and maintaining beach fires along Carmel Beach. Importantly, these provisions clearly provide significant LCP detail associated with beach fires, and clearly evince the LCP's intent to allow for wood fires in particular. These standards include references to "burnable material," "ash," "embers," and "coals," that are associated with wood fires:

IP Regulations Section 17.20.20.D - Location and Time Limits on Beach Fires. *No person, firm, corporation or other entity shall build, light, maintain, cause or permit, to be built, lighted or maintained any open or outdoor fire on any public beach designated by the City after the hour of 10:00 p.m. No fires shall be permitted at any time on the slopes leading thereto within the City. This prohibition is applicable to all that beach and slope area lying west of Scenic Road and south of Ocean Avenue to the southern City boundary. No fires shall be permitted at any time on all that beach and slope area lying west of San Antonio from Ocean Avenue to the northern City boundary. The prohibition against all fires on all the beach that lies at or below the high tide line shall extend from 10:00 p.m. on the day it commences until 7:00 a.m. the following day.*

IP Regulations Section 17.20.20.E - Recreational Fires on Carmel Beach. *All fires on Carmel Beach shall meet the following requirements:*

- 1. Beach fires shall be used for cooking or warmth and shall be located on that part of the City beach property which lies south of an extension of the center line of Tenth Avenue and west of a line reached by the high tide provided that all of the following conditions are met:*
 - a. The base of the fire shall be defined as the level at which the lowest burnable material or ash is located, and it shall be on the beach sand unless the fire is in a hibachi, charcoal grill or other like receptacle, in which case the base shall be a horizontal plane touched by the lowest burning material.*
 - b. The burnable material used in the fire shall not extend more than two feet above the base of the fire.*
 - c. Flames from the fire shall not extend into the air more than five feet from the base of the burnable material in the fire.*
 - d. The longest horizontal straight-line distance through the base of the fire shall not exceed four feet.*
 - e. Flammable liquids other than charcoal starter shall not be used in any manner in connection with starting or maintaining the fire.*
 - f. No fire shall be built, lit, or maintained on any slope or within 25 feet of any wall, vegetation or combustible material not intended to be used in the fire.*

- g. All flammable coals, embers, or burning materials shall be extinguished with seawater by the person or persons building, lighting, or maintaining the fire prior to said person or persons leaving the beach.*
- h. The extinguished remains of all fires shall be left exposed and not covered with sand.*
- i. Building, lighting, maintaining or causing or permitting to build, light, or maintain a fire in violation of any of the above conditions shall be an infraction.*
- j. Penalties: Any person who shall violate any of the provisions of this chapter that necessitates the response of the Fire Department shall be guilty of an infraction punishable by a fine of not more than \$50 per hour or portion thereof, not to exceed \$500.*

The LCP requires that maximum public access to and recreational use of the beach be provided and protected (*LUP Policy G4-1*). The LCP also states that a wide variety of active and passive recreational experiences shall be available for all beach users while protecting the resource values of the beach environs (*LUP Policy G4-4*), and respecting the neighborhood (*LUP Policy G4-3*). The LCP specifically provides for beach fires for warmth and cooking along Carmel Beach (*LUP Policy O4-10 and Implementation Plan (IP) Section 17.20.20E*) with specific provisions on timing and location (*LUP Policy P4-57 and IP Section 17.20.20D*). Lastly, the LCP requires that lower-cost recreational facilities be protected and encouraged and, where feasible, provided with a preference for public recreational opportunities (*LUP Policy P4-62*).

Analysis

The City's Program establishing a Program area, placing limits on the number of fires, formalizing setbacks and hours of use, among other parameters,⁷ was approved in June 2016 and there were no Commission appeals received on the City's 2016 action. Those base Program elements have since been implemented by the City. They are not the subject of this appeal.

The City's amendment to the established Program (July 3, 2018), however, extending the length of the Program until November 30, 2020 and amending the Program to include the use of "smokeless" fire ring devices, reducing the Program area from 8th Avenue to 10th Avenue, and instituting air quality monitoring, constitute the scope of the development that is the subject of this appeal. Thus, what is on appeal is not the entire Program itself, which constitutes baseline conditions, but rather these modifications of the existing City-approved Program.

With regard to the extension of the term of the Program from June 30, 2019 to November 30, 2020, this extension will allow for the City to collect more information on how the Program is working with respect to the protection of coastal resources, public safety, and air quality.⁸ As

⁷ The City's Program provides for up to 12 wood-fueled beach fire devices on Carmel Beach between Eighth Avenue and Martin Way. In addition, all beach fire rings must be setback a minimum of 75 feet from the toe of the bluff and fires may only occur between the hours of 4 p.m. and 10 p.m.

⁸ If the term of the Program is not extended, the Program will terminate on June 30, 2019, and at that time there would be no restrictions on the number of beach fires that could take place at any one time, and no requirement

discussed in the “Background” section above, this additional time is needed because of interruptions in implementation of the Program due to the Soberanes wildfire and the heavy fall/winter and spring storms of late 2016 and early 2017. Thus, this appeal contention does not raise a substantial issue because the time extension will in fact facilitate the ability of the City to better evaluate the Program’s impact to coastal resources, public safety, and air quality.

With respect to public safety and health contentions, the Program, as modified, further addresses these concerns, especially for those with high sensitivity to smoke, by employing the use of “smokeless” wood fire ring devices. The City’s approval includes replacing the standard beach fire cauldrons with special devices that utilize a secondary combustion process designed to reduce the amount of smoke and particulate matter emanating from beach fires. The City purchased nine new “smokeless” devices for use during the 2018 beach fire season.⁹ The “smokeless” devices are 19 inches in diameter as compared to the 36-inch cauldrons. The smaller size should also act to limit the size of fires and thus the amount of smoke created by fires (in addition to the device’s inherent “smokeless” design), which in turn, should allow a greater segment of the public to utilize the beach and blufftop path during the hours when beach fires are allowed under the Program while avoiding externalities associated with the fire ring devices. Recent demonstrations and monitoring of the new “smokeless” devices by the City appear to support claims of reduced smoke and particulate matter and respond to questions of neighborhood compatibility (*LUP Policies G4-1, G4-3, and O4-10*). See **Exhibit 5** for photos of the “smokeless” devices. In addition, the Program’s enhanced air quality monitoring will test the efficacy of these devices. Therefore, the approved project is meant to address the Appellant’s concerns in terms of providing beach fires in a manner that protects public health in an LCP-compliant manner relative to the existing Program in place (which is the baseline condition), and does not raise a substantial LCP conformance issue.

In addition, the City approved Program area modifications to address concerns that too much of the beach was dedicated to providing beach fires (i.e., concerns that there was an inappropriate balance between coastal access and public safety). The modification to reduce the boundaries of the Program from Eighth Avenue to Tenth Avenue will reduce the beach fire Program area by two city blocks (approximately 1,000 linear feet – see page 2 of **Exhibit 1**) and ensure that nearly three-quarters of the Carmel Beach frontage will be available to the general public without the presence of beach fires. This Program modification will allow beach fires to continue on a portion of the beach, while allowing greater use of other areas of the beach for other non-fire-related recreational uses (*LUP Policy P4-7*). For this further reason, the Appellant’s contentions also do not raise a substantial issue as the revised Program area will actually *reduce* impacts associated with the existing Program in place (which, again, is the baseline condition).

The Program modifications also include monitoring of air quality and the installation of three air quality units in locations adjacent to the beach fire Program area (i.e., at 9th Street, 11th Street, and adjacent to the Scenic Road restrooms at Santa Lucia Avenue). Air quality data provided

that beach fires be contained in a fire ring device, unless the City took a separate action to implement such restrictions.

⁹ The Program still allows for a total of 12 wood-fueled fire rings on the beach; thus, the City could place the nine “smokeless” wood-fire rings on the beach, as well as three standard wood-fire ring cauldrons.

thus far demonstrates that the 24-hour average ambient air quality within the vicinity of the beach and Program area at all three monitoring sites is well below state and federal ambient air quality standards. The monitors only measure the amount of particulate matter at the monitoring site and not the odor of smoke, which is often the basis for public complaints. The certified LCP provides no specific guidance or standards regarding ambient air quality, but there is broad language with respect to providing recreational facilities in a manner that protects the resource values of the beach environment and respects the neighborhood. It is anticipated that the adaptations adopted by the City in combination with the above Program element changes will better achieve conformance with LCP requirements of maximizing access including opportunities for a recreational beach fire while protecting natural resources including air and water quality,¹⁰ and respecting the local neighborhood environment (*LUP Policies G4-3 and G4-4*) by facilitating relevant data collection which will subsequently inform the City's decisions going forward regarding the appropriateness of its beach fire Program in relation to the certified LCP.

Lastly, the Appellant contends that a propane-only program eliminates all the potential environmental and health concerns associated with wood fueled fires and therefore the City's action on the permit extension is inconsistent with the LCP. In prior discussions regarding the use of propane on the beach, City staff provided web-links to several off-the-shelf propane fire devices that members of the public could purchase for their personal use on the beach, which ranged in price from \$90 - \$250 (not including tax) depending on the device. The two identified devices are 15 and 18 inches in diameter, respectively, and are portable for easy transport. Aside from being small, the devices are relatively expensive. At a starting price of nearly \$100 (with tax), even the less expensive user-supplied option could be a significant impediment to this historically important recreational activity, particularly for many low- and moderate-income individuals and families (not to mention the \$250 device, which would be some \$275 with tax). The certified LCP requires that public access and recreational opportunities be maximized (*LUP Policy G4-1*) and lower-cost recreational facilities protected and, if feasible, provided (*LUP Policy P4-62*). A beach fire that requires a minimum \$100 investment to participate in cannot be considered a lower cost recreational activity, nor can it be expected to maximize public access consistent with LCP requirements.

Furthermore, propane devices typically do not heat to the same high temperatures of burning wood and thus do not radiate heat in the same way as do wood fires. Warmth from such propane devices is limited to indirect exposure to the flame itself. Some of the units with high BTU¹¹ ratings have a decent flame that puts off light and some heat. However, because it is just a flame,

¹⁰ Regarding water quality, the Program approved in 2016 required all fires to be located in fire rings, i.e., fires are no longer allowed to be placed directly on the beach sand. As part of the 2016 approval, City staff is required to regularly maintain and clean the fire rings and remove the ash debris to an appropriate offsite location. Thus, ash debris no longer enters Carmel Bay or Sanctuary waters as a result of allowance of beach fires on Carmel Beach. The City-approved modifications to the Program, which are the subject of this appeal, made no changes to the ban on fires directly on beach sand or to the City's fire ring maintenance requirements.

¹¹ The British thermal unit (BTU) is a traditional unit of work equal to about 1055 joules. It is the amount of work needed to raise the temperature of one pound of water by one degree Fahrenheit. For a more physical analogue, one four-inch wooden kitchen match consumed completely generates approximately 1 BTU.

warmth from the fire does not radiate out from the unit to an appreciable distance.¹² Also for this same reason, the propane devices do not perform very well in windy conditions. Although suitable for use in a protected space, such as between large parked RV's, these devices would not be very effective in the chilly and windy unprotected beach environment that is typical during the evening at Carmel Beach. Additionally, a host of safety issues are associated with the operation of a propane device on the beach. Propane is a volatile substance and a leak in the system could result in a fire or explosion, and serious harm to users. In addition, there are many unresolved logistical questions about the programmatic use of propane including with regard to operations, maintenance, costs, security, safety, etc., all of which could result in significant impediments to the use and enjoyment of recreational beach fires, inconsistent with the LCP (*LUP Policy P4-62*). As such, the City concluded that a propane-only beach fire program was not an appropriate alternative. The LCP does not require, encourage, or even mention propane devices, and thus the contention does not raise a substantial LCP conformance issue.

In conclusion, beach fires are part of a rich, nearly 100-year tradition at Carmel Beach and have been available to the public at no cost with minimal restrictions (e.g., allowed anywhere south of Tenth Avenue and 25 feet from the bluff) for many decades. As such, beach fires are an existing lower-cost recreational opportunity in the City of Carmel. The Program approved in 2016 allowed beach fires to continue, subject to a cap on the number of beach fires and other restrictions to protect coastal resources, public safety, and air and water quality. The City's approved modifications to the Program (which are the subject of this appeal) will further maximize public access consistent with resource protection and the need to ensure the health and safety of the public by extending the time for data collection and Program evaluation and by further limiting the scope of the approved Program in order to address coastal resource concerns. For all of the above reasons, the approved project does not raise a substantial issue of conformance with the public access and recreation policies of the LCP.

H. CONCLUSION

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 for such development. At this stage, the Commission has the discretion to find that the project does not raise a substantial issue of LCP conformance. As explained above, 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 City; the significance of the coastal resources affected by the decision; the precedential value of the City'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 this project does not raise a substantial issue of LCP conformance. Regarding the first factor (degree of factual and legal support for the local government's decision), LCP policies require the provision of

¹² Typical wood fire rings are designed to hold a bed of hot coals that radiates large amounts of heat capable of warming an area extending well beyond the limits of the fire ring itself.

maximum public access and recreational opportunities to and along the coast, and specifically Carmel Beach (*LUP Policy G4-1*). The LCP contains specific provisions for the protection of recreational beach fires (*LUP Policies O4-10 and P4-57*) with further emphasis on the protection of existing and provision of new lower-cost recreational facilities (*LUP Policy P4-62*) and assurance of adequate public facilities to serve the needs of the public (*LUP Policy G4-3*). Additionally, the IP establishes the regulations and parameters for having a fire on the beach including provisions for wood fires, limits on the location and time when fires may occur, the size and height of fires, and requirements for extinguishing fires (*IP Sections 17.20.20.D and 17.20.20.E*). The City's action to extend the term of the Program and to modify it to include new "smokeless" fire devices, a reduced Program boundary, and air quality monitoring maximizes public access, enhances public health and safety, and protects lower-cost recreational facilities in a manner specifically contemplated by the LCP and further provides adequate facilities for the large number of visitors who flock to Carmel from for that quintessential beach fire experience.

Regarding the second factor (the extent and scope of the development as approved by the City), the extent of the City's approval was to modify the approval of its Beach Fire Management Pilot Program to include "smokeless" fire ring devices, a reduced Program boundary, and air quality monitoring. Considering that the LCP policies specifically contemplate wood-fueled beach fires and the City's permit extension of the Program, as modified, would be in furtherance of the LCP's specific requirements on the use of the beach in this manner, it is reasonable to conclude that the extent and scope of the project is fairly minor. Conceptualized another way, the scope of the development approved by the City is minor because, relative to the existing Program in place (which is the baseline condition), the approved project will actually reduce the scope of development as approved under the original Program. Regarding the third factor (the significance of coastal resources affected by the decision), the approved project involves the use of the beach for recreational beach fires in close proximity to Carmel Bay, the Scenic Road recreation trail, and nearby residences. Program modifications include the use of "smokeless" fire ring devices, a reduced Program area, and monitoring of air quality in the vicinity of the Program area to mitigate damage to the environment, address public health and safety concerns, and to ensure that coastal resources are adequately protected. Regarding the fourth factor (precedential value of the City's approval), the beach fire Program is supported in this case because the activity is part of the historic fabric of the City and it has been specifically identified as a permitted and protected use along Carmel Beach. In other words, the City's action to modify the Program in a manner which will actually reduce the scope of the Program to address coastal resource concerns does not raise a substantial issue regarding interpretation of the LCP. Finally, regarding the fifth factor (whether the appeal raises only local, or regional or statewide, issues of significance), the project approval is for the modification of the Program as is allowed under specific provisions of the certified Carmel-by-the-Sea LCP regarding a specific historic recreational tradition unique to Carmel Beach and does not implicate broader-level issues of regional or Statewide significance.

For the reasons stated above, the Commission finds that Appeal Number A-3-CML-18-0050 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS¹³

- City of Carmel-by-the-Sea LCP, June 2004
- Coastal Commission Appeal File Number A-3-CML-15-0030
- City of Carmel-by-the-Sea Adopted Beach Fire Management Pilot Program, June 2016
- Coastal Commission Appeal File Number A-3-CML-18-0050

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- City of Carmel-by-the-Sea Planning Staff

¹³ These documents are available for review in the Commission’s Central Coast District office.