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Appeal Filed: 5/16/2018
49th-Working Day: 7/26/2018
Staff: Kevin Kahn - SC
Staff Report: 6/22/2018
Hearing Date: 7/12/2018

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal Number: A-3-SCO-18-0034

Applicants: Mark and Mary Dettle

Appellant: Steve Wiesinger

Local Government: Santa Cruz County

Local Decision: Coastal development permit (CDP) application number 171056 approved by the Santa Cruz County Planning Commission on April 11, 2018.

Location: 21226 East Cliff Drive (APN 028-101-32) at its intersection with 13th Avenue, in the Live Oak area of Santa Cruz County.

Project Description: Demolish an existing single-story, single-family residence; remove one 42-inch-diameter redwood tree; subdivide an approximately 8,600-square-foot lot into two lots; construct two single-family residences (one on each newly created lot) and associated improvements, including drainage and landscaping enhancements and a new four-foot-wide public sidewalk, curb, and gutter along East Cliff Drive.

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

Santa Cruz County approved a coastal development permit (CDP) to authorize the following: removal of an existing residence and a mature redwood tree; subdivision of a roughly 8,600-square-foot parcel into two lots; dedication of a four-foot-wide swath along the length of the property's frontage with East Cliff Drive to the County for a public sidewalk, curb, and gutter, all of which the Applicant will construct; construction of two single-family residences (one on each newly created lot); and related improvements, including landscaping and drainage. The project site is located in an urbanized area in unincorporated Live Oak, about a third of a mile from the beach. Residential development is located on the site's western and southern sides along 13th Avenue, and commercial development is located on the site's northern and eastern sides along the East Cliff Drive commercial corridor.

The Appellant contends that the County-approved project raises Santa Cruz County Local Coastal Program (LCP) consistency questions related to the removal of the redwood tree, residential community character, drainage, and traffic safety. After reviewing the local record, Commission staff has concluded that the approved project does not raise a substantial issue with respect to the project's conformance with the Santa Cruz County LCP.

While the Appellant argues the redwood tree should be retained on-site, the County made reasonable findings and conditions on why removal was allowable for this specific tree. As discussed in more detail in the staff report, the LCP allows for the removal of defined mature trees, and the County made explicit findings on why removal was warranted in this case (e.g., the tree partially interfered with driver line-of-sight, wasn't particularly aesthetically pleasing due to it being partially cut to protect an adjacent utility pole and wires, and that a required planting of twelve replacement trees would address the site's visual quality). As such, the approved project's tree removal does not raise a substantial LCP compliance issue. Furthermore, with respect to the other appeal contentions, the approved project's new lots will meet the LCP minimum parcel size for the zoning district, and the approved residences also meet all other applicable quantitative development standards, including for height, lot coverage, and parking. The approved residences will be of relatively modest size and scale and will fit in within the broader urban residential aesthetic of the neighborhood. The project will also remove an existing dilapidated structure that immediately abuts the East Cliff Drive right-of-way so closely that it blocks views for those traveling eastbound along East Cliff Drive. Thus, the approved project will both improve the site's visual appearance as well as better protect driver safety.

The project also includes a new public sidewalk, drainage improvements (including directing stormwater to bioswales), and landscaping improvements. Thus, the approved project meets all

of the LCP's site development standards, provides replacement trees for the one removed, improves the visual appearance of the site, better protects driver safety, improves drainage, and provides needed public sidewalk improvements. For all these reasons, the County-approved project can be found consistent with the LCP, and thus does not raise substantial LCP conformance issues.

As a result, 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.

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APPENDICES

Appendix A – Substantive File Documents

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EXHIBITS

Exhibit 1 – Project Site Map

Exhibit 2 – Project Site Images and Photographic Simulations

Exhibit 3 – County’s Final Local Action Notice

Exhibit 4 – Approved Project Plans

Exhibit 5 – Appeal of Santa Cruz County’s CDP Decision

Exhibit 6 – Applicable LCP Policies and Standards

CORRESPONDENCE

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-SCO-18-0034 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-SCO-18-0034 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.*

II. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND LOCATION

The County-approved project is located at 21226 East Cliff Drive at its intersection with 13th Avenue in the Live Oak area of Santa Cruz County. The project site is located in an urban portion of Live Oak, with residential development located on the site's western and southern sides along 13th Avenue, and commercial development located on the site's northern and eastern sides along the East Cliff Drive commercial corridor. The parcel is roughly 8,600 square feet in size and is zoned R-1-3.5 (Single-Family Residential, 3,500-square-foot minimum parcel size). The parcel contains a small, mostly dilapidated residential structure that immediately abuts the East Cliff Drive right-of-way (this structure is nonconforming with respect to the LCP's required street setback). A 42-inch-diameter (at breast height) redwood tree is present along 13th Avenue on the property's eastern edge. The tree is irregularly shaped because its crown has previously been cut in half to avoid an adjacent utility pole and associated wires.

The County's approval authorizes the following: removal of the existing residence and redwood tree; subdivision of the parcel into two lots, one 4,625 square feet in size and the other 3,649 square feet in size; dedication of a four-foot-wide swath along the length of the property's frontage with East Cliff Drive to the County for a public sidewalk, curb, and gutter, all of which the Applicant will construct; construction of two single-family residences (one on each newly created lot) of 2,258 and 1,678 square feet, respectively; and related improvements, including landscaping and drainage facilities.

See **Exhibit 1** for a location map; see **Exhibit 2** for photographs of the site and surrounding area, as well as photo-simulations of the County-approved residences; and see **Exhibit 4** for the approved project plans.

B. SANTA CRUZ COUNTY CDP APPROVAL

On April 11, 2018 the Santa Cruz County Planning Commission approved a CDP for the proposed project. The County's Final Local Action Notice was received in the Coastal Commission's Central Coast District Office on Wednesday May 2, 2018 (see **Exhibit 3**). The Coastal Commission's ten-working-day appeal period for this action began on Thursday May 3, 2018 and concluded at 5 p.m. on Wednesday May 16, 2018. One valid appeal (see below) was received during the appeal period.

C. 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 includes a subdivision, which is not the principal permitted use under the LCP's R-1-3.5 zoning district.

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 project de novo unless a majority of the Commission finds that "no substantial issue" is raised by such allegations.¹ 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 not located between the nearest public road and the sea and thus this additional finding would not need to be made (in addition to a finding that the proposed development is in conformity with the Santa Cruz County

¹ 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.

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).

D. SUMMARY OF APPEAL CONTENTIONS

The Appellant contends that the County-approved project raises LCP consistency questions relating to the removal of the redwood tree, residential community character, drainage, and traffic safety. Specifically, the Appellant contends that the approved project would violate applicable LCP provisions because: 1) it removes the 42-inch redwood tree, which is defined as a “mature tree” in the LCP and is afforded certain protections by the LCP, and the tree removal will disturb wildlife; 2) the subdivision and new residences are not compatible with the residential character of the adjacent community; 3) the increased pavement and impervious surfaces will increase stormwater runoff onto adjacent residential properties and into Schwann Lagoon; and 4) the project will result in unsafe traffic conditions because one of the new residences will have vehicular ingress/egress via East Cliff Drive, which is a busy arterial. Please see **Exhibit 5** for the appeal contentions.

E. SUBSTANTIAL ISSUE DETERMINATION

1. Redwood Tree Removal

As discussed above, the Appellant argues the County’s approval to remove the existing redwood tree to accommodate the subdivision and residences is inconsistent with LCP tree protection requirements (see **Exhibit 5**). The Santa Cruz County LCP seeks to protect certain trees, including mature trees greater than six inches in diameter. For such trees, Implementation Plan (IP) Section 13.20.130(B)(2) (see **Exhibit 6** for applicable LCP policies and standards) encourages them to be maintained, except where circumstances require their removal, including if the tree obstructs a building site, is dead or diseased, etc. In addition, the LCP’s Design Review requirements specify that existing mature trees are to be retained and incorporated into the site design of a proposed project, but allows for their removal if circumstances warrant it, including if the tree is a nuisance, would obstruct a prime building site, etc. (IP Section 13.11.075(A)(2)). Thus, the general intent of the LCP is to protect defined mature trees and incorporate them into the siting and design of new development. However, the LCP does allow for their removal if circumstances arise that warrant such removal. And while the LCP lists a few examples of circumstances that could be permissible reasons for mature tree removal, it does not limit removal to those listed examples.² In other words, the LCP has relatively broad parameters

² IP Section 13.11.075(A)(2)(b): Circumstances where tree removal may be appropriate *include*.... IP Section 13.20.130(B)(2): Developers shall be encouraged to maintain all mature trees over six inches in diameter except where circumstances require their removal, *such as*.... (emphasis added, see **Exhibit 6**).

for the removal of mature trees so long as the Reviewing Authority makes specific findings explaining why removal is warranted.

At 42 inches in diameter, the redwood tree on the subject property qualifies as a mature tree per the LCP. As such, and pursuant to the LCP standards specified above, the County made specific findings on why removal was warranted. Specifically, the County found that the tree encroached into the line of sight for drivers at the 13th Avenue and East Cliff Drive intersection, and thus removal would better protect driver and pedestrian safety; that the tree is not particularly visually appealing because a portion of its crown was previously removed to avoid the adjacent utility pole and wires (see photos of tree in **Exhibit 2**); and that the project's arborist report (see page 41 of **Exhibit 3**) did not identify any concerns with respect to the tree's removal given its compromised visual appearance. In addition, the County included specific conditions to ensure tree removal would not impact nesting birds and special status bats by requiring removal outside of the nesting/breeding seasons for these species (see page 22 of **Exhibit 3**). The County also conditioned its approval to require a landscape plan to replace the loss of the tree with seven new trees along the site's East Cliff Drive and 13th Avenue frontages and five new trees along the site's southern property line (see pages 21 and 35 of **Exhibit 3**). For all of these reasons, and to accommodate the otherwise LCP-compliant residential subdivision project in this urban, infill location, the County approved the redwood tree's removal. While the Appellant argues the tree should be retained on-site, including to protect wildlife, the County made reasonable findings for why removal was allowable for this specific tree, and also conditioned its approval to require the planting of 12 new trees in the vicinity to compensate for removal of the tree. As discussed above, the LCP allows for mature tree removal when circumstances arise that warrant such removal, and the County explained the specific circumstances in this case. As such, the approved project's tree removal does not raise a substantial LCP compliance issue.

2. Residential Community Character, Drainage, and Traffic Safety

As previously described, the Appellant contends the County-approved project will adversely affect neighborhood character, and will result in drainage and traffic safety impacts (see **Exhibit 5**). The LCP includes numerous policies addressing these issues. For example, with respect to drainage and water quality, Land Use Plan (LUP) Policy 5.4.14 requires erosion control measures and on-site detention to reduce urban runoff. The LCP protects community character and neighborhood compatibility through a suite of provisions for new development that apply certain design criteria and require visual compatibility with surrounding areas (for example, see IP Chapter 13.11 and IP Section 13.20.130 et. seq.). In addition, the LCP includes quantitative standards specifying allowable design, including with respect to minimum lot size, building height, setback, coverage, floor area ratio (FAR), and parking. As discussed previously, the project site is zoned R-1-3.5, which allows for single-family residential development on lots of a minimum of 3,500 square feet. The approved project's new lots, after dedicating a width of four feet along the entirety of the project site's frontage with East Cliff Drive, will be 4,625 and 3,649 square feet respectively and thereby meet the LCP's 3,500-square-foot minimum lot size requirement for each lot. The approved project's two residences also meet all other applicable aforementioned quantitative development standards, and will be of a relatively modest size and scale (i.e., 2,258 and 1,678 square feet, respectively) and will fit in within the broader urban residential aesthetic of the adjoining neighborhood (see **Exhibit 4** for approved project plans). Further, the approved project will remove an existing dilapidated structure (see photo in **Exhibit**

2) that immediately abuts the East Cliff Drive right-of-way so closely that it blocks the views of those traveling eastbound along East Cliff Drive. Thus, the approved project will both improve the site's visual appearance as well as better protect driver safety. The project also includes construction of a new public sidewalk, drainage improvements (including directing stormwater to bioswales in conformance with LUP Policy 5.4.14), and landscaping improvements (again, see approved project plans in **Exhibit 4**). Thus, the approved project meets all of the LCP's site development standards, improves the visual appearance of the site, better protects driver safety, improves drainage, and provides much needed public sidewalk improvements. For all these reasons, the County-approved project can be found consistent with the LCP, and thus the contentions do not raise substantial LCP conformance issues.

F. 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 County; the significance of the coastal resources affected by the decision; the precedential value of the County's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

In this case, these five factors, considered together, support a conclusion that this project does not raise a substantial issue of LCP conformance. First, as discussed in the findings above, the County-approved project was justified as consistent with all applicable LCP provisions, including with respect to the redwood tree's removal, for which the County made factual findings to support its decision, and with the LCP's lot and building standards and drainage improvement/traffic safety requirements. Thus, the County has provided adequate factual and legal support for its decision that the approved development would be consistent with the certified LCP. The approved project is a relatively modest two-lot subdivision and includes the construction of two relatively modest-in-size single-family residences within an existing urban residential neighborhood, and it will not adversely impact significant coastal resources. Because the project can be found fully consistent with the LCP as the County did, a finding of no substantial issue will not create an adverse precedent for future interpretation of the LCP. Finally, the project is infill residential development in an urbanized residential community and thus does not raise issues of regional or statewide significance.

For the reasons stated above, the Commission finds that Appeal Number A-3-SCO-18-0034 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 DOCUMENTS³

- Santa Cruz County Coastal Development Permit 171056 File

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- APPLICANT
- APPELLANT
- SANTA CRUZ COUNTY PLANNING DEPARTMENT STAFF

³ These documents are available for review in the Commission's Central Coast District office.