

CALIFORNIA COASTAL COMMISSION

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



W33a

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STAFF REPORT: CDP AMENDMENT

- Application Number:** 3-11-027-A2
- Applicant:** City of Santa Cruz Department of Parks and Recreation
- Project Location:** Cowell and Main Beaches located seaward of the Union Pacific Railroad Trestle, Santa Cruz Beach Boardwalk, Beach Street, Ideal Bar and Grill Restaurant, the Dream Inn, the Sea and Sand Inn, and West Cliff Drive, and roughly between San Lorenzo Point and Collins Cove in the City of Santa Cruz.
- Original Project Description:** Implement the City's Beach Management Plan at Cowell and Main Beaches for three years, including: general beach area maintenance activities (sand sifting, debris removal, etc.); kelp removal (including as part of a two-year kelp-water quality study with an associated environmental monitoring component); minor beach re-contouring (except along the San Lorenzo River and its lagoon); summer beach concessionaire; public recreation and education activities; seasonal Seaside Company bandstand and picnic deck; special and temporary events; safety facilities and operations, flood control/drainage discharge operations; a signage program; and (pursuant to amendment A1) add two additional volleyball courts at Cowell Beach, and implement a nighttime curfew on the dry sand at Cowell Beach.
- Amendment Description:** Reauthorize the City's Beach Management Plan at Cowell and Main Beaches for an additional five years, including all project components as described above, except amend the Plan to allow additional flexibility to various management components

(subject to Executive Director oversight), remove the seasonal Seaside Company picnic deck, reauthorize the nighttime curfew on the dry sand at Cowell Beach, and extend it to also include the dry sand at Main Beach

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The City of Santa Cruz is requesting coastal development permit (CDP) approval to implement its Beach Management Plan (BMP) for Main and Cowell Beaches for the next five years. The BMP regulates use and maintenance operations on Main and Cowell Beaches in a manner intended to protect marine resources, provide for public safety, and enhance the extent and quality of public access and beach recreation opportunities. The City of Santa Cruz has been authorized by the Commission to implement similar beach management plan activities at this location since 1995 (CDP 3-95-043, as amended twice, and CDP 3-11-027, as amended once). In general, the City's BMP and the Commission's authorization of it to date have performed as intended and have provided for enhanced coastal access and recreational opportunities without significant negative impacts to coastal resources. The main issues raised by past BMP implementation have been related to special and other events in the beach area in terms of impacts to coastal public access and recreation, questions related to kelp removal/beach grooming and the effect of such activities on water quality and the beach environment, and the Cowell Beach curfew, again, in terms of impacts to coastal public access and recreation.

The existing BMP is multifaceted, and includes provisions for regular maintenance operations (e.g., beach grooming, including litter removal, leveling and contouring of sand for volleyball tournaments, etc.), seasonal debris removal (e.g., of logs and other debris washed down the San Lorenzo River), limited public-oriented commercial uses (e.g., beach concessionaire rentals), recreational and educational programs (e.g., Junior Lifeguard and beach volleyball programs), the Seaside Company's (Santa Cruz Boardwalk) bandstand, special and temporary events, flood and drainage discharge operations, and a signage program. The City proposes to update the current version of the BMP to retain most of the previously authorized management activities, and to provide more flexibility to its implementation of these activities without anticipated adverse impacts to coastal resources, subject to Executive Director oversight. The BMP strikes a reasonable balance between various competing uses at these extremely popular beaches, and staff believes that it is appropriate to provide the City more flexibility in managing these activities without anticipated adverse impacts to coastal resources, subject to Executive Director oversight. Accordingly, staff believes that these revised elements of the BMP are consistent with the Coastal Act's public access and recreation and marine resources policies.

The City is also proposing authorization for an additional five years of the night time curfew at Cowell Beach, which currently operates between midnight and one hour before sunrise, and to extend that curfew to also include Main Beach. In past instances, the Commission has consistently raised concerns about any types of beach curfews on the basis of adverse impacts to coastal public access and recreation, and did so in the 2014 approval of the Cowell Beaches curfew. It has approved such nighttime closures only when there are demonstrable health, safety,

or welfare problems that need to be addressed by the local government, and the scope of the closure/limits are limited and tailored to address the identified problem(s). In 2014, the Commission found that the Cowell Beach curfew proposal met these requirements, but also conditioned its approval to require that the City submit monitoring reports to understand the curfew's impacts and its benefits as well as better understand any long-term need for the curfew.

In this case, the City has provided evidence that there is a continuing public safety problem (including illicit activities, such as drug use and extensive littering) associated with certain nighttime activities on both Cowell and Main Beaches. The City believes that the curfew restrictions for Cowell Beach have resulted in the amount of calls for police and emergency services and the number of hours spent addressing issues on Cowell Beach between midnight and one hour before sunrise decreasing since the curfew came into effect. The City implemented the Main Beach curfew only several weeks ago, and while statistical data on its impact is not yet available, City staff has observed a noticeable decline in illicit activities there as well during nighttime hours.

In terms of public access impacts, the two most important elements of the proposed curfew extension are: 1) it only applies from midnight to one hour before sunrise, during which time the vast majority of the public are not generally using the beach, and 2) it still allows the public to use the dry sand area to access the wet sand area and ocean (i.e. for those who may want to go for a late night walk along the beach or go for a nighttime swim). Thus, the proposed curfew extension is narrowly tailored to address legitimate and demonstrated problems identified by the City while still allowing for public access to the wet sand and ocean during these nighttime hours. In addition, if the City intends the curfew to be extended in the next iteration of the BMP in five years, this CDP is conditioned that the City provide information at that time regarding the effect of the curfew on both illicit and bona fide public use activities on Cowell and Main Beaches, as approval of the initial Cowell Beach curfew was conditioned.

Commission and City staff coordinated closely throughout the permit application process to arrive at a mutually agreeable project proposal, including by participating in a number of meetings. Overall, and subject to the recommended conditions, the BMP, as amended, will continue to protect and enhance public access and recreation and minimize adverse environmental impacts to coastal marine resources. Therefore, Staff recommends that the Commission approve the CDP amendment for the BMP. The necessary motion is found below on page 5.

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APPENDICES

Appendix A – Substantive File Documents

Appendix B – Staff Contact with Agencies and Groups

EXHIBITS

Exhibit 1: Project Location Maps

Exhibit 2: Site Photographs

Exhibit 3: Proposed Amended Beach Management Plan

Exhibit 4: Cowell Beach Curfew Report (without Public Correspondence Attachment)

I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit amendment 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 amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission **approve** the proposed amendment to Coastal Development Permit Number 3-11-027 subject to the conditions set forth in the staff recommendation, and I recommend a **yes** vote.*

***Resolution to Approve CDP Amendment:** The Commission hereby approves coastal development permit amendment number 3-11-027-A2 and adopts the findings set forth below on grounds that the development, as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act. 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. SPECIAL CONDITIONS

This permit amendment is granted subject to the following special conditions. All terms and conditions of the original approval of Coastal Development Permit No. 3-11-027-A1 remain in full force and effect, except those that are explicitly replaced or modified in this amendment, as follows:

- 1. The Beach Management Plan.** This approval authorizes the development as set forth in the Beach Management Plan submitted by the Applicant, and stamped received on 10/29/2019.
- 2. Duration of Authorization.** The duration of development authorized under this CDP shall expire five years from the date of Commission approval (i.e., on November 13, 2024).
- 3. Cowell and Main Beaches Curfew Reporting.** Authorization for the Cowell and Main Beaches curfew component of the BMP shall expire five years from the date of Commission approval (i.e., same as the BMP overall). Any future CDP amendment or new CDP application to extend the Cowell and Main Beach curfews shall be limited to a maximum term of authorization of five years. Additionally, if the City wishes to continue the curfew component of the BMP as part of its request to further extend the BMP, the City shall submit the following as part of its application materials for renewal of the BMP in 2024: A report that evaluates the effect of the curfew on illegal and on bona fide public use activities at Cowell and Main Beaches both during curfew and non-curfew times, and that identifies next steps to be taken by the City to address any potential curfew implementation issues. The report must be based on data collected from police and other appropriate sources (including data on the number of calls for service, numbers of arrests, list of infractions at Cowell and Main Beaches during the curfew hours, number of needles found on the beach, etc.)

- 4. Assumption of Risk, Waiver of Liability, and Indemnity.** By acceptance of this permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (i) that the site is subject to hazards from episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunami, tidal scour, coastal flooding, and the interaction of same; (ii) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission’s approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- 5. Liability for Costs and Attorneys’ Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys’ fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

III. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The City of Santa Cruz’s proposed Beach Management Plan (BMP) applies to all sandy areas of Main and Cowell Beaches in the City of Santa Cruz. These areas are located seaward of the Santa Cruz Beach Boardwalk, the Railroad Trestle, Beach Street, the Ideal Fish Company, the Dream Inn, the Sea and Sand Inn, and West Cliff Drive, and are located roughly between San Lorenzo Point (downcoast) and Collins Cove (upcoast) along the City’s shoreline (see **Exhibit 1: Location Maps** and **Exhibit 2: Site Photographs**).¹

Cowell Beach is the sandy beach area upcoast of the Santa Cruz Municipal Wharf, and Main Beach is the sandy beach area downcoast of the Wharf. In total, these two beach areas are approximately 1.3 miles long and vary seasonally in width to as little as 100 feet at certain points during the winter months. During the summertime, Main Beach provides extensive sandy beach areas of up to 500 feet wide. The sandy beach areas provide a beach environment with favorable wave and water conditions suitable for many activities including surfing, swimming, volleyball,

¹ Some of this area is owned by the City, some is held in trust by the City, and some is owned by the Seaside Company subject to a public access easement. At any rate, this BMP applies to all of the sandy beach areas identified above.

bodysurfing, and sunbathing. In addition, the Santa Cruz Beach Boardwalk,² adjoining commercial establishments, and the City's Municipal Wharf are located on and adjacent to Main and Cowell Beaches. These areas form the most popular beach and general visitor destination in all of Santa Cruz County, and arguably the entire central coast of California, with heavy public use occurring primarily during the period between the Memorial Day weekend and Labor Day. Visitors come from all over the world to recreate along the Boardwalk, the Wharf, Cowell Beach and Main Beach. There are multiple accessways to these beaches from lateral trails extending along most of this shoreline.³ The beaches are open to the general public and there are no restrictions on hours of use except for the City's existing beach curfew on Cowell Beach (proposed to be extended as part of this application) and a proposed new curfew on Main Beach substantially similar to the existing curfew for Cowell Beach.

Project Background

In 1995, the City's original BMP was added to the City's Local Coastal Program (LCP Amendment 1-95) to help provide guidance for decisions in the beach area, and the Commission approved its initial implementation of the BMP for a five-year period.⁴ The Commission then approved two additional amendments authorizing continuing BMP implementation, and in 2006 the authorization period was reduced to three years in light of Commission concerns regarding kelp removal and beach grooming operations.⁵ At that time the Commission was interested in better understanding the balance being struck between facilitating beach recreational use and the effect of kelp removal operations on beach ecology, and whether kelp was or was not resulting in poor water quality on Cowell Beach. Three years was deemed an appropriate interim period to allow the City to look into such issues for the next iteration of the BMP. Since then, the City has been working towards addressing poor water quality that continues to plague Cowell Beach.

When the City developed a new and updated BMP (CDP 3-11-027), it was designed to further respond more comprehensively to both the problems the City previously identified as affecting beach recreational use and the Commission's concerns last expressed in the 2006 approval of the BMP. Conditions of approval for CDP 3-11-027 included approval of the BMP for a three-year period and a kelp and water quality study, which required annual monitoring and reports submitted for Executive Director review. As a means of furthering the science and informing future CDP decisions related to kelp removal and beach grooming of Santa Cruz County beaches, the City entered into a partnership with the Southern California Coastal Water Research Project and researchers from Stanford University to study the impacts of kelp removal on water quality and beach ecology. The research objectives were designed to meet the needs of the City and the Commission in relation to the BMP and serve to provide valuable information to inform future decisions regarding the protection of coastal environmental and recreational resources in

² The Boardwalk is the West Coast's largest seaside amusement park with over 35 rides and one million visitors annually.

³ Including direct public access from the publicly available (free of charge) Boardwalk and City pathways along Beach Street, and access from the Dream Inn for Dream Inn guests.

⁴ CDP 3-95-043 was approved on May 11, 1995.

⁵ CDP amendment (CDPA) 3-95-043-A1 approved on September 14, 2000 for an additional five years, and CDPA 3-95-043-A2 approved on August 10, 2006 for an additional three years.

this location. The City also committed to a similar study related to beach grooming as well. The results of the kelp-water quality study were intended to provide, at a minimum, whether there was any correlation between water quality data and kelp removal data, and identify discernable trends or relationships associated with the study data (including for kelp, wildlife, debris, and water quality) as well as make recommendations for adapting kelp removal operations as necessary in the coming years to better protect coastal resources, particularly including water quality. However, the study ultimately concluded that the origination of the bacteria problem at Cowell Beach was terrestrial rather than marine, *i.e.* it was not caused by kelp found on the beach. The study's findings also demonstrate that there is a consistent human bacterial source to Cowell Beach that has not yet been clearly identified. The City continues its efforts to identify the cause of the bacterial problem at Cowell Beach.⁶

The 2014 BMP amendment (CDP 3-11-027-A1) authorized the BMP at Cowell and Main Beaches for an additional five years (including general beach area maintenance activities; kelp removal; minor beach re-contouring; summer beach concessionaire; public recreation and education activities; seasonal Seaside Company bandstand and picnic deck; special and temporary events; safety facilities and operations, flood control/drainage discharge operations; and a signage program) but removed the requirement for a kelp-water quality study and associated environmental monitoring. It also added two public volleyball courts on Cowell Beach and authorized a midnight to one hour before sunrise curfew on the dry sand at Cowell Beach (see additional discussion on the curfew issue below).

Project Description

The City is requesting that the BMP be authorized for another five years. The proposed BMP provisions are substantially similar to provisions included in CDP 3-11-027 and CDP 3-11-027-A1, but have been slightly updated to allow additional flexibility to various management components (but without anticipated adverse impacts to coastal resources and subject to Executive Director oversight), and to remove the seasonal Seaside Company picnic deck and volleyball court. The City also seeks to extend the curfew at Cowell Beach for an additional five years, and to extend that curfew to include Main Beach. See **Exhibit 3** for the proposed BMP. Specific components of the BMP are described in more detail immediately below.

Recreational and Educational Programs

The proposed BMP limits use of Main and Cowell Beaches for recreational and educational programs, such as the Junior Lifeguard Program, to no more than 20% of the total beach area and requires that these activities be conducted in a manner that best protects general public beach access, including requiring that lateral access along the beach not be impacted by these activities. The City also maintains a specified area for volleyball courts for public use on Main Beach. These courts may be reserved for use via the City Park and Recreation Department's online reservation system. In order to ensure overall beach availability for general public use, certain defined recreational uses that occupy large beach areas, such as the City's beach volleyball courts, are restricted to specifically designated areas.

⁶ In 2014, the Cowells Working Group was formed to study and address the vexing water quality issue at Cowell Beach. The group, facilitated by Save The Waves, is comprised of the City of Santa Cruz, County of Santa Cruz, Surfrider Foundation, and Sierra Club.

Special/Temporary Events

Special and temporary events are held regularly at Cowell and Main Beaches throughout the year. Special events, as understood in this proposed BMP, are considered those that occur regularly and usually on an annual basis, such as the Santa Cruz Triathlon. Temporary events, as understood in this BMP, are non-annual events and are scheduled on an *ad hoc* basis, such as weddings or any reserved use of the City's beach volleyball courts. As outlined in the BMP, the scheduling and noticing to the public for both special and temporary events is to include type of event, date, times, specific location, expected number of participants, and any proposed fees required. As proposed in the BMP, by January 1st of each year (and prior to any event occurring for that year), the City will provide to the Commission's Executive Director for review and approval a list of all known special events and any known temporary events pursuant to this BMP (temporary events identified subsequent to the January 1 noticing are noticed immediately to the Executive Director via the City's email distribution list). Only events on the approved list are allowed, and any changes to the approved list must first be submitted to the Executive Director for review and approval subject to the same criteria. All events that are scheduled after the Executive Director's approval of the yearly list are also subject to the Executive Director's approval based on the same methods, where any subsequent event to which the Executive Director has not responded within ten days of receiving the event notification package from the City is deemed approved. In addition, special and temporary events are not allowed to restrict more than one-third i.e., 33%, of the total beach area (including the volleyball courts, which occupy about 10% of the beach),⁷ except in special circumstances, and must be configured in such a way as to avoid stairways to the beach and to otherwise minimize impacts on general public beach use. For any special circumstances, the Executive Director must be noticed and shown that such circumstances: (1) will not adversely impact recreational uses of the beach; and (2) will not adversely impact coastal resources. Finally, all special and temporary events are subject to the Commission's 1993 temporary events guidance.

Cowell Beach Volleyball Courts

The City proposes two public volleyball courts to be located on Cowell Beach in the upper beach area located adjacent to and in front of the Dream Inn (**Exhibit 1**). This area is not as intensively used as other areas of the Cowell Beach because of its distance away from the shoreline. Both courts will be available for free public use year round.

Bandstand, Beach Deck, Walkways, and Main Beach Volleyball Courts

The BMP previously authorized the Santa Cruz Seaside Company (i.e. the "Boardwalk") to construct a temporary approximately 3,800-square-foot deck, volleyball courts, and public walkways over the sandy beach immediately adjacent to the Boardwalk Casino building between May 1st and October 31st of each year. The current BMP proposal does not include the 3,800-square-foot deck or volleyball courts.⁸ However, the current BMP proposal continues to authorize the Boardwalk to construct a temporary beach bandstand (an approximately 2,000-

⁷ When the volleyball courts are reserved, they count towards this 33% total. Thus, at these times, special and temporary events other than the volleyball courts can only occupy up to a little over 20% of the remaining beach.

⁸ The City, the Seaside Company, and Commission staff are currently in discussions regarding other potential ways to utilize this space in a manner that provides greater benefit to the public (e.g., a public access boardwalk). Any future proposed deck or other use of this beach space not covered by this BMP would need a separate CDP authorization.

square-foot stage) used for a variety of free public events, including but not limited to: magic shows, cheerleading competitions, body building contests, Sunday sunrise services, tanning contests, a clam chowder cook-off, group beach games, music concerts, band review awards, DCARA (Deaf Counseling Advocacy & Referral Agency) Day awards, sand castle contests, as well as the "Summertime, Summer Nights" free public concerts and movie series.

Kelp Removal and Beach Grooming

The BMP contains similar kelp removal activities as in past BMP permits, which include: removal of kelp above the high tide/wrack line (beyond the minor amounts of kelp that may be collected incidental to regular maintenance operations) during the summer season. However, the City is proposing to expand this program to include the months of April through October to limit impacts of high flying insect populations and large beach displacement areas on beachgoers. For the remainder of the year, kelp will only be removed above the high tide line under limited circumstances, such as when the removal is incidental to ordinary grooming or necessary to clear sections of the beach when large kelp deposits prevent public access or create safety issues. In addition, the most extensive kelp removal activities will continue to be limited to mornings before 11 a.m., but will be allowed beyond that time as necessary to meet the goals of this provision. Further, no kelp removal or grooming is allowed on any sand area within 100 feet of the San Lorenzo River or its lagoon except to maintain the accessibility of the City's eastern emergency/maintenance vehicle accessway, and all kelp removal and beach grooming activities will continue to be undertaken in a manner that limits public recreational use impacts.

Curfew Background and Description

On April 23, 2013, the City Council adopted a resolution that declared that a public nuisance exists at Cowell Beach and implemented a one-year beach curfew (from midnight to one hour before sunrise) at Cowell Beach. The City states it took this action to address criminal activities (e.g., drug use, late night loitering, etc.) that had been taking place at Cowell Beach during the nighttime hours. The City implemented the curfew under its public nuisance authorities. Commission staff advised the City at that time that the curfew appeared warranted under such public nuisance authority at that time, but that, given that the nuisance declaration was premised on a one-year duration beach curfew, any extension of such a curfew past the initial one-year period would need to be recognized by a CDP.⁹

The City's Cowell Beach curfew policy prohibited the public's use of the dry sand portion of the beach (the area that extends from Collins Cove to the area located under the Wharf, a shoreline length of approximately 1200 feet) during the hours of midnight to one hour before sunrise, with the provision that the dry sand portion of the beach may be used at all hours to access the wet sand portion of the beach, and that the wet sand portion of the beach would remain open to the public 24 hours a day in accordance with all applicable rules for beach use (e.g., no camping, no alcohol, no smoking, etc.) and for all uses of the public for which the beach may currently be used (e.g., fishing, jogging, kayaking, paddleboard and surf launching and landing, walking, meditating, swimming, sightseeing, nature observation, etc.). In other words, the dry sand portion of the beach was allowed to be used to access the wet sand portion of the beach during the curfew hours, but it could not otherwise be used for any other purpose at that late night time.

⁹ See Coastal Act section 30005.

On July 22, 2014, the City adopted a new resolution to extend the Cowell Beach curfew for an additional year. In addition, the City Council directed City staff to work with Commission staff to develop a longer-term solution if the nuisance conditions at Cowell Beach did not dramatically improve. Because the BMP covers all beach management activities at Cowell Beach, and because the City was in the process of pursuing an amendment to change and renew the BMP and its CDP, the 2014 BMP included authorization for the curfew for a five-year period, including requiring an analysis of its impacts both in terms of addressing identified concerns as well as impacts to public recreation. At the November 2014 hearing, the Commission voiced concerns about limiting bona fide public access in this heavily used area. While the Commission understood the public safety concerns and ultimately approved the curfew, it wanted to understand its impacts on public access and thus required that the City study those impacts and to prepare and submit a report regarding them.

In the time since the 2014 Cowell Beach Curfew was instituted, the City has identified similar issues and concerns regarding the use of Main Beach, including drug use and extensive littering, as identified in the City's study (See **Exhibit 4**).¹⁰ This CDP Amendment application therefore proposes to extend the midnight-to-one-hour-before-sunrise curfew for Cowell Beach for an additional five-year term and implement a similar curfew on Main Beach during the same five-year term.

The current BMP proposal seeks an additional five-year authorization of the curfew at Cowell Beach, and also seeks to extend that curfew to include Main Beach.

B. STANDARD OF REVIEW

All of Main and Cowell Beaches are located within the Commission's original CDP jurisdiction, and thus the Commission retains CDP authority over these areas. Chapter 3 of the Coastal Act is the standard of review, with the City of Santa Cruz certified LCP serving as guidance to the Commission.

C. PUBLIC ACCESS AND RECREATION

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." The proposed project is located seaward of the first through public road (Beach Street). Coastal Act Sections 30210 through 30214(a), 30220, 30221, and 30223 specifically protect public access and recreation. In particular:

***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*

¹⁰ Note that the correspondence attachment of the report is not included in this exhibit due to its size. However, that correspondence, received as part of the September 10, 2019 City Council meeting to discuss restricting beach access on Main Beach, the public comments were overwhelmingly in support of the beach restrictions: 359 people voiced support, 8 voiced opposition, and 6 voiced unclear positions.

the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

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.*

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...*

Section 30213. *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

Section 30214(a): *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case...*

Section 30220. *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30221. *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30223. *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Public Access Background

The Santa Cruz Beach Boardwalk, adjoining commercial establishments, and the City's Municipal Wharf are located on and adjacent to Main and Cowell Beaches. These areas together form the most popular beach and general visitor destination in all of Santa Cruz County, and arguably the entire central coast of California. An estimated one million visitors annually (with most of these visiting during the summer and fall months) from a variety of locations and economic backgrounds, swim, relax, play, and generally enjoy the beaches and other amenities found here. Especially during the summer months, the beach area can be packed with families, blankets, and umbrellas, occupying almost its entire area. As such, and because of this heavy use, these beaches are often not the ones visited by those looking for a quiet, or more pristine natural beachscape, such as those located further north or south outside of the Santa Cruz urban core. However, even with the hustle and bustle associated with such heavy use, the BMP has helped to manage and provide quality public access and recreation opportunities along its approximately one-mile length.

The proposed BMP largely carries forward the previously authorized management parameters that have proven successful at managing heavy recreational use and provide an appropriate balance between public and public-oriented private use on what are considered historic tidelands of the State of California. It includes appropriate limits on the size and scope of recreational and

educational activities (e.g. the extremely popular “Junior Guards” program) to ensure that these activities do not impact general public access to the beach, including lateral access. These programs are a service to the community and generate limited revenue, which is returned to the City’s general fund. In addition, the BMP’s special and temporary event guidelines have been designed to minimize impacts on both the public and natural resources. Moreover, to encourage public recreation, the Seaside Company is authorized to construct a temporary beach bandstand (an approximately 2,000 square foot stage) used for a variety of free public events identified above, and City policy prohibits charging for these events.

City staff monitors all of these uses on a regular basis to ensure the parameters of allowed use and activities per the BMP are being followed and that public use and accessibility of this beach-area resource continues to be provided. Given all the above, these elements of the BMP maximize public access opportunities, consistent with the Coastal Act.

Cowell and Main Beach Curfew

Cowell Beach is a significant public access resource area that is heavily used by the public for typical beach activities, including use – albeit more limited – at night. Coastal Act 30210 requires “maximum access,” but also explicitly tempers this requirement with the need to be cognizant of public safety needs. Similarly, and although Section 30211 does not allow for interference with public beach access rights, Section 30214 identifies the need to implement the Coastal Act’s public access provisions in a way that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances of each case.

In past instances, including this one, the Commission has consistently raised concerns about beach curfews with respect to public access impacts, and did so in its 2014 approval of the Cowell Beach curfew component of the BMP then. The Commission has approved such nighttime closures only when there are demonstrable problems and the scope of the closure is limited and tailored to address the problems while minimizing impacts to coastal resources, particularly public access. In 2014, the Commission found that the Cowell curfew proposal to meet these tests, but also conditioned its approval to require that the City submit monitoring reports that analyze the curfew’s impacts and benefits to ensure efficacy of the curfew as intended.

In this case, the City has provided evidence that there is a continuing public safety problem associated with certain nighttime activities on both Cowell and Main Beaches. According to the City’s “Beach Nighttime Access Restrictions Summary Report,” (see, **Exhibit 4**) the types of nuisance-related impacts in the beach area are ongoing and the pattern is cyclical and has spread to include Main Beach in addition to Cowell Beach. Without enforcement, word quickly spreads that the beach area can be used for illicit activities and these activities then grow in scope and scale, which causes legitimate beachgoers and the City to be concerned about public health and safety. For the City, this concern not only stems from beach users encountering unsightly hazards (such as used hypodermic needles and trash) during the morning hours, but also is related to the safety of beach users at nighttime when these illicit activities may be taking place.

In the case of Cowell Beach, the amount of calls for police and emergency services during curfew hours has declined since the curfew came into effect (with a resultant decrease in the amount of time City staff and emergency personnel have spent addressing issues on Cowell

Beach). The City implemented the Main Beach curfew only several weeks ago, and while statistical data on its impact is not yet available, City staff has observed a noticeable decline in illicit activities on Main Beach during nighttime hours as well.

In terms of public access impacts, the two most important elements of the proposed curfew extension are: 1) it only applies from midnight to one hour before sunrise, during which time the vast majority of the public are not generally using the beach, and 2) it still allows the public to use the dry sand area to access the wet sand area and ocean (i.e. for those who may want to go for a late night walk along the beach or go for a nighttime swim). Thus, the proposed curfew extension is narrowly tailored to address legitimate and demonstrated problems identified by the City while still allowing for public access to the wet sand and ocean during these nighttime hours. In addition, if the City intends the curfew to be extended in the next iteration of the BMP in five years, this CDP is conditioned for the City to provide information at that time regarding the effect of the curfew on both illicit and bona fide public use activities on Cowell and Main Beaches (see **Special Condition 2**).

Conclusion

The City of Santa Cruz along with the Seaside Company, which oversees management of the Santa Cruz Boardwalk and a portion of Main Beach, has served to provide an exceptional visitor experience for the general beach-going public, and has appropriately maximized public recreational access opportunities under the City's BMP to date. In this same tradition, the amended BMP, as conditioned, ensures protection of public access recreation opportunities as required by Chapter 3 of the Coastal Act by managing access, including promoting public safety, and minimizing public recreational access impacts while allowing for a multitude of uses for those visiting Main and Cowell Beaches. Therefore, as conditioned the BMP is consistent with the above-cited public access and recreational policies of the Coastal Act.

D. MARINE AND BIOLOGICAL RESOURCES

Coastal Act Sections 30230, 30231, and 30232 afford protection of marine resources and their associated biological productivity and state:

***Section 30230:** Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

***Section 30231:** The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats,*

and minimizing alteration of natural streams.

***Section 30232:** Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

Analysis

The BMP approved by the Commission in 2011, like those before it, allowed a variety of sand-manipulating maintenance activities to occur on the beach (often lumped together under the term “grooming”) that can affect marine resources, and which can generally be separated into two categories – kelp removal and beach grooming.¹¹ In terms of kelp removal, the 2011 BMP (CDP 3-11-027) allowed the removal of kelp located above the high tide/wrack line between Memorial Day and Labor Day and “only as necessary to limit impacts of high insect populations on beachgoers.” That CDP also allowed the removal of kelp, not subject to location or date restrictions, when Santa Cruz County Environmental Health Services determined that excessive kelp on the beach in that location was causing bacterial counts to exceed state safe water quality standards. The 2011 BMP allowed beach grooming to occur during the late fall, winter and early spring months, but primarily and especially during the summer high use season. The 2014 CDP amendment allowed for continued kelp removal and grooming activities (prior to 11 a.m.) in the dry, sandy areas above the high tide/wrack line between Memorial Day and Labor Day as necessary to limit impacts of high fly populations and to clear piles of kelp that impact and limit areas of sandy beach available for beachgoers. In this BMP update, the City has requested to expand the time frame for kelp removal activities to include April through October due to ever-growing public use of the beaches during this period, as well as to provide additional flexibility to allow such removal after 11am if necessary. That said, the BMP continues to acknowledge that the most extensive kelp removal will occur between Memorial Day and Labor Day and primarily before 11am to meet kelp removal goals.

Prior BMP methods and practices for kelp removal and beach grooming have generally worked as intended to enhance public recreational use of the beach, as described above. As indicated in the previous findings, Main and Cowell Beaches are intensively used by the public and function almost exclusively as recreational beach space, apart from the portion nearest the San Lorenzo River (and where the BMP explicitly does not allow any beach manipulation within 100 feet of the river) (see **Exhibits 1 and 2**). Although beach ecologists generally agree that regular removal of kelp from beaches and beach grooming activities can have negative impacts on birds and other wildlife species that reproduce and forage on the coast (including by disturbing food sources such as insects and their habitat), there is little direct evidence associated with Main and Cowell Beaches to suggest that past or proposed kelp removal and beach grooming has or will lead to adverse biological resource impacts at this location. Again, as previously indicated, these are high use beach areas with generally lower habitat function than more isolated beach areas (such as those on Santa Cruz’s north coast). Based on this context and fact set, the Commission has historically authorized such activities at Cowell and Main Beaches under the BMP (as it has in

¹¹ Beach grooming includes debris removal that involves leveling, contouring, smoothing, sifting, and similar sand manipulation using machinery.

other cases statewide),¹² including because there are no special status species known to inhabit Main and Cowell Beaches,¹³ and because ecological impacts have not been deemed significant enough to dictate otherwise.

Cowell and Main Beaches have historically been subject to regular beach grooming activities, with ongoing sand sifting and occasional kelp removal, including incidental removal during other maintenance operations, for decades. While it seems likely that the BMP-proposed removal of kelp from dry sand areas during the summer months and beach grooming activities may have some effect upon the general beach ecology, the fact that these are high public use beaches that have historically been manipulated suggests that it would be a limited effect at these beaches and would appear to present very little potential for any type of significant habitat concern.

Conclusion

As discussed, heavy recreational use of Main and Cowell Beaches limits their beach ecological productivity, and the extent of the kelp removal and other beach grooming activities proposed by the City is not expected to significantly diminish their ecological values in the future. Both the prior water quality study and the ecological monitoring and analysis have been used to inform the City's BMP operations, helping to ensure that all activities are accomplished in a manner that is most protective of marine resources. Thus, as proposed, the BMP is consistent with the marine resources policies of the Coastal Act.

E. OTHER

Coastal Act Section 30253 requires development to assure long-term stability and structural integrity, and to minimize risk to life and property in areas of high geologic, flood, and fire hazard. The Commission recognizes that there is a certain amount of risk involved in development that is located at the shoreline edge and that can be directly subject to erosion, violent storms, large waves, flooding, earthquakes, and other geologic hazards. These risks can be exacerbated by such factors as sea level rise and localized geography that can focus storm energy at particular stretches of coastline. The Commission has sought to limit such risks, but they cannot be eliminated entirely, and this fact must be recognized and liabilities assumed by the Applicant accordingly. Specifically, the Commission's experience in evaluating proposed developments in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage and other such occurrences. Development in such dynamic environments is susceptible to damage due to such long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) in the millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden for damages onto the people of the State of California, Applicants are justifiably required to acknowledge site hazards and agree to waive any claims of liability on the part of the

¹² More than 100 miles of sandy shoreline between Santa Barbara and San Diego are regularly and intensively groomed under CDP authorization.

¹³ The Commission has in the past raised more significant concerns with kelp removal and beach grooming when such species are present, such as limiting beach grooming activities in Southern California on beaches associated with grunion runs (see for example, CDPs 4-05-155 and 4-10-066 for the Santa Barbara Harbor and Waterfront Area, and 4-10-061 for City of Carpinteria).

Commission for allowing the development to proceed. Accordingly, this approval is conditioned for the Applicant to assume all risks for developing at this location (see **Special Condition 3**).

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications.¹⁴ Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this permit (**Special Condition 4**).

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit 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.

The City of Santa Cruz, acting as lead agency, found that the project was exempt from CEQA requirements pursuant to Class 1, Section 15301 of the CEQA Guidelines. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The preceding coastal development permit findings discuss the relevant coastal resource issues with the proposal, and the permit 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)

¹⁴ See also California Code of Regulations Title 14 Section 13055(g).

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS¹⁵

- California Coastal Commission coastal development permit (CDP) files 3-11-027, 3-11-027-A1; 3-95-043, 3-95-043-A1; 3-95-043-A2 and 3-90-031-A2
- Certified City of Santa Cruz Local Coastal Program (LCP)
- City of Santa Cruz Beach Management Plan (dated May 2011)
- City of Santa Cruz Beach Management Plan (dated November 2014)
- City of Santa Cruz and Seaside Company Beach Maintenance Agreement (2011)
- City of Santa Cruz Resolutions to adopt Cowell Beach curfew, April 23, 2013 and July 22, 2014
- City of Santa Cruz Beach Management Plan Kelp Monitoring and Water Quality Study Final report, February 28, 2014
- City of Santa Cruz LCP Amendment No. 1-95 (June 14, 1995, Beach Management Plan)
- San Lorenzo River Enhancement Plan (City of Santa Cruz, 1989)
- Nearly Lagoon Management Plan (City of Santa Cruz, 1992)
- San Lorenzo Urban River Plan, 2003
- California Coastal Commission Proposed Guidance on Actions Limiting Public Access to Beaches and State Waters (Beach Curfews) June 23, 1994
- Santa Cruz Police Department, Cowell’s Beach Curfew Recommendation for Support, June 9, 2014

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- City of Santa Cruz
- Seaside Company

¹⁵ These documents are available for review in the Commission’s Central Coast District office.