

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



F22a

Appeal Filed: 6/28/2019
Action Deadline: 9/9/2019
Staff: Sarah Carvill - SC
Staff Report: 7/26/2019
Hearing Date: 8/9/2019

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal Number: A-3-STC-19-0106

Applicant: Santa Cruz County Regional Transportation Commission

Appellant: Save Our Big Trees

Local Government: City of Santa Cruz

Local Decision: City coastal development permit (CDP) application number CP18-0160 approved by the City of Santa Cruz Planning Commission on April 18, 2019, and that approval upheld on June 11, 2019 by the City Council on appeal.

Project Location: Intersection of California and Bay Streets about three-fourths of a mile inland of the shoreline to the roundabout intersection of Beach Street and Pacific Avenue at the base of the Santa Cruz Municipal Wharf in the City of Santa Cruz.

Project Description: Construct a 0.79-mile-long, 12-foot-wide, paved, bicycle/pedestrian path adjacent to the existing Santa Cruz Branch Rail Line, including safety lighting, storm drains, and a timber-lagging retaining wall.

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 Santa Cruz approved a coastal development permit (CDP) to construct a 0.79-mile, 12-foot-wide paved bicycle/pedestrian trail alongside a portion of the railroad tracks within the existing Santa Cruz Branch Line railroad corridor. The trail would begin at the intersection of California Street and Bay Street (about three-fourths of a mile inland of the shoreline on the west side of the City of Santa Cruz) and extend to the Beach Street/Pacific Avenue roundabout at the base of the Santa Cruz Municipal Wharf near the Main Beach/Boardwalk area. The approved trail segment is part of a larger “rail trail” project¹ that, upon completion, is designed to connect northern and southern Santa Cruz County through a mixed-use paved bicycle/pedestrian trail located mostly in the Santa Cruz Branch Line railroad corridor, which owned by the Applicant (the Santa Cruz County Regional Transportation Commission). The rail trail is intended to serve as a primary component of the Santa Cruz County portions of the Monterey Bay Sanctuary Scenic Trail (MBSST) network and the California Coastal Trail (CCT).

The Appellant contends that the approved project is inconsistent with City of Santa Cruz Local Coastal Program (LCP) policies related to wetlands, riparian vegetation, environmentally sensitive habitat area (ESHA), and cultural resources. After reviewing the local record, staff has concluded that the approved project does not raise a substantial issue with respect to the project’s conformance with the City of Santa Cruz LCP.

Specifically, the Appellant contends that the approved project is located within the buffer for Neary Lagoon and that such siting is not allowable under the LCP, and that the approved removal of trees and riparian vegetation to make way for the trail, including eucalyptus trees that may be used as monarch butterfly habitat, violates LCP policies that protect ESHA generally and monarch butterflies particularly. However, the LCP allows a public recreational access trail in the area in question, provided that impacts are minimized and mitigated. Moreover, the LCP management plan for Neary Lagoon anticipates a trail in this location, and allows recreational uses within both the Lagoon and its buffer area. In addition, the City appropriately determined that the eucalyptus trees in question do not provide LCP-protected monarch butterfly habitat. The Appellant also argues that the LCP requires a more robust alternatives analysis than was performed by the City in its approval, and that the approved project’s protections for cultural resources are inadequate. However, the City identified the tradeoffs associated with the other possible alignments and project permutations in a manner allowing them to make the requisite findings under the LCP, and required a Native American representative and an archeologist to be

¹ The Applicant intends for the entire corridor, considered in total, to be used for passenger and freight service on the railroad tracks, as well as the paved bicycle/pedestrian public trail alongside of the tracks (i.e., a “rail-trail” combination of uses).

present when earthmoving activities will be undertaken in the vicinity of known cultural resources, as required by the LCP.

In short, the City approved the trail in this area only after eliminating other potential alternatives that could avoid the Lagoon buffer area (and located the trail on the opposite side of the railroad tracks from the Lagoon), and the approval results in trail siting and design (including mitigation measures) to protect coastal resources associated with the Lagoon and its habitat values as directed by the LCP. At its core, this is an important public recreational access project that is allowed in this area under the LCP, and the City has modified the project to avoid impacts where possible and mitigated the project's unavoidable impacts. As a result, staff recommends that the Commission determine that the City's approval does not raise a substantial LCP conformance issue in light of the appeal contentions, and that the Commission decline to take jurisdiction over the CDP application for this project. The single motion necessary to implement this recommendation is found on page 5 below.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....	5
II. FINDINGS AND DECLARATIONS.....	5
A. PROJECT DESCRIPTION AND LOCATION	5
B. CITY OF SANTA CRUZ CDP APPROVAL.....	7
C. APPEAL PROCEDURES	7
D. SUMMARY OF APPEAL CONTENTIONS	8
E. SUBSTANTIAL ISSUE DETERMINATION	8
1. Wetlands, Riparian Vegetation and ESHA Protection	8
2. Monarch Butterfly Habitat.....	11
3. Other Contentions	12
F. CONCLUSION.....	14

APPENDICES

Appendix A – Substantive File Documents

Appendix B – Staff Contact with Agencies and Groups

EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Project Site Images

Exhibit 3 – Approved Project Plans

Exhibit 4 – City’s Final Local CDP Action Notice

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

Exhibit 6 – Relevant LCP Provisions

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-STC-19-0106 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603, and I recommend a yes vote.*

***Resolution to Find No Substantial Issue.** The Commission finds that Appeal Number A-3-STC-19-0106 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 DESCRIPTION AND LOCATION

The City-approved project is a 0.79-mile paved bicycle/pedestrian trail along a segment of the existing Santa Cruz Branch Rail Line, which is owned by the Applicant (the Santa Cruz County Regional Transportation Commission),² and runs some 32 miles through Santa Cruz County between Davenport and Watsonville, some of it near the shoreline. The approved trail segment would be part of a larger project that, upon completion, is designed to connect northern and southern Santa Cruz County with a mixed-use trail located mostly in the Santa Cruz Branch Rail Line right-of-way.³ This trail is intended to serve as a primary component of the Santa Cruz County portions of the Monterey Bay Sanctuary Scenic Trail (MBSST) network and the California Coastal Trail (CCT). The project under appeal is the third segment of the Applicant's overall trail project to be approved. Specifically, in 2017 the City approved the segment running

² The Santa Cruz County Regional Transportation Commission purchased the Santa Cruz Branch Rail Line rail corridor in 2012.

³ The Santa Cruz Branch Rail Line is a railroad corridor established in 1876 that had in the past been used for the movement of freight, but such activity has been very limited in recent years. The Applicant has allowed some passenger rail service on the rail line since 2012 (e.g., holiday trains), but again in limited areas. The rail line corridor has also historically been used as a de facto pedestrian trail in the areas alongside of the railroad tracks, including because it cuts through the Santa Cruz County landscape in a way that predates much of the street and development layout and thus provides a relatively direct means of getting from place to place. That said, other than the Applicant's trail projects, and some private efforts at rudimentary trail development, the existing "trail" is generally in the form of volunteer footpaths on either side of the tracks. The Applicant's mixed-use trail projects are intended to ultimately enhance trail access by creating a paved bicycle/pedestrian public trail along the entire Santa Cruz Branch Rail Line segment running through Santa Cruz County. The Applicant intends for the corridor to be used for passenger and freight service on the railroad tracks, as well as the paved bicycle/pedestrian public trail alongside of the tracks (i.e., a "rail-trail" combination of uses).

from Natural Bridges Drive to the intersection of Bay and California Streets, and in September 2018 the Commission approved a consolidated CDP for a short segment of the trail that crosses the San Lorenzo River on the existing railroad trestle bridge. That latter project was completed in May of this year and is currently open for public use.

The appealed project would run adjacent to and south (i.e., seaward) of the portion of the rail line corridor extending from the intersection of California Street and Bay Street on the City of Santa Cruz's west side (about three-fourths of a mile inland of the shoreline) to the Beach Street/Pacific Avenue roundabout at the foot of the Santa Cruz Municipal Wharf near the Main Beach/Boardwalk area. The trail would pass through a corner of the existing and mostly linear La Barranca Park, then alongside the City's Regional Wastewater Treatment Facility and the Neary Lagoon open space area before connecting to the roundabout at the base of the Santa Cruz Municipal Wharf. The trail would provide a connection between the residential neighborhoods of the City's west side and the its commercial, visitor-serving beachfront area.

The rail alignment in the project area slopes gently downward from the California Street/Beach Street intersection and La Barranca Park, mostly along the side of the slope that extends down from the elevation of La Barranca Park to the elevation of Neary Lagoon. Most of the trail would be located upslope from Neary Lagoon itself, but the trail reach closest to the roundabout is essentially flat and parallels a drainage feature on the opposite (northern) side of the railroad tracks. This drainage feature connects Neary Lagoon to a pump station that can be used either to direct runoff from the Lagoon to the wastewater treatment plant or allow it to flow via gravity through a storm drain that exits onto Cowell Beach just seaward of the roundabout.⁴ The drainage feature and the pump station are both located within the railroad wye (i.e., a triangular track configuration used to turn trains around) adjacent to a City corporation yard that serves the Municipal Wharf.

The trail would be approximately 12 feet wide, and located about 10 feet from the rail centerline (with variations at the east and west ends), mostly within the existing rail corridor property.⁵ To make room for the trail, a timber lagging retaining wall ranging in height from 3.5 to 19.5 feet would be installed along about two-thirds of the overall project length (about 3,140 feet) at the toe of the slope next to the existing tracks. Up to 42 trees would be removed along the approved trail alignment as part of the project, including 16 with heritage status under the LCP.

The project also includes improvements to the Beach Street/Pacific Avenue intersection to support a bicycle crossing, new storm drain infrastructure along the trail alignment, and trail safety lighting that is compliant with International Dark-Sky Association standards.

⁴ Bacteria levels in Neary Lagoon typically increase during the dry season due to the reduced freshwater flows into the lagoon and its use by birds and fish. In order to avoid releasing this water directly onto the beach, Neary Lagoon discharge is diverted to the City's wastewater treatment plant via a bypass line and treated prior to discharge into the Pacific Ocean. In order to minimize discharge onto Cowell Beach, the City may also divert lagoon water for treatment during the winter months if the plant has adequate capacity for the additional influent.

⁵ A small component of the project, less than 0.25 acres, is located on the back side of two privately owned parcels that extend to the toe of the slope.

See **Exhibit 1** for a location map and **Exhibit 2** for photographs of the site and surrounding area. See **Exhibit 3** for the City-approved project plans.

B. CITY OF SANTA CRUZ CDP APPROVAL

On April 18, 2019 the City of Santa Cruz Planning Commission approved a CDP for the proposed trail project. The Planning Commission's decision was appealed (by the current Appellant in this Coastal Commission appeal) to the City Council which, after deliberation, upheld the approval and denied the appeal on June 11, 2019. The City's Final Local CDP Action Notice (see **Exhibit 4**) was received in the Coastal Commission's Central Coast District Office on Friday, June 14, 2019. The Coastal Commission's ten-working-day appeal period for this action began on Monday, June 17, 2019 and concluded at 5 p.m. on Friday, June 28, 2019. One valid appeal (see **Exhibit 5**) 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; and (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 qualifies as a major public works project, because a portion of the project area is located within 100 feet of the Neary Lagoon wetland area, and because a portion of the project is located seaward of the first through public road and within 300 feet of the beach.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP and/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.⁶ Under Section 30604(b), if the Commission conducts the de novo portion of an appeals hearing (upon making a determination of "substantial issue") the Commission must approve a CDP provided it finds that the proposed development is in conformity with the

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.

certified LCP. 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. A portion of this project is located between the nearest public road and the sea and thus this additional finding would need to be made if the Commission were to approve the project following the de novo portion of the hearing (if applicable).

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 City-approved project raises LCP consistency questions relating to protection of wetlands, environmentally sensitive habitat area (ESHA), and monarch butterfly habitat. Specifically, the Appellant contends that the approved project would violate applicable LCP policies because the project falls within the riparian buffer for Neary Lagoon, and because trees and riparian vegetation would be removed to make way for the retaining wall and the lower portion of the trail, including eucalyptus trees that may be used as monarch butterfly habitat. The Appellant also argues that the LCP requires a more robust alternatives analysis than was done during the City's approval process and that the approved project's protections for cultural resources are inadequate. Please see **Exhibit 5** for the appeal contentions.

E. SUBSTANTIAL ISSUE DETERMINATION

1. Wetlands, Riparian Vegetation and ESHA Protection

As described above, the City-approved project would mostly be located along the side of a hill leading from La Barranca Park (and the west wide residential neighborhoods beyond) down to Neary Lagoon, with the lower reach of the trail running through a flatter area on the opposite side of the tracks from the Neary Lagoon outlet channel. The area is characterized primarily by invasive ruderal vegetation, along with some riparian vegetation. The approved project would not result in fill of any part of Neary Lagoon itself, nor of its outlet; however the trail would cover about an acre of vegetation that is considered riparian scrub. Much of this area is dominated by invasive species such English ivy, cape ivy, and Himalayan blackberry, however, and all of it is separated from Neary Lagoon proper and its drainage feature by the existing railroad tracks. See **Exhibit 2** for project site images.

The Appellant contends that the approved project raises LCP consistency issues because of the project's proximity to wetland habitat in and around Neary Lagoon, and because removal of the toe of the hill upslope of the existing tracks to make room for the trail will result in the removal of vegetation, including native trees and riparian species. The Appellant argues that LCP Environmental Quality (EQ) Policy 4.2.2.3 prohibits development and vegetation removal in wetland and that the City-approved project also violates LCP EQ Policy 4.2.2, which requires

minimization of development impacts on wetlands through setbacks of at least 100 feet and inclusive of all riparian vegetation. The Appellant also cites various Neary Lagoon Management Plan (NLMP) policies (all part of the City's certified LCP) that limit access to the Lagoon by the public and require the City to protect, restore, and secure management control over riparian forests in the Lagoon area (see **Exhibit 6** for a complete list of relevant LCP policies).

The City ultimately decided that a recreational trail in the Neary Lagoon area can be found consistent with the policies cited by the Appellant, as well as other LCP directives, for a variety of reasons. First, notwithstanding the general prohibition on development and vegetation removal in wetlands, EQ Policy 4.2.2.3 does allow certain uses within riparian and wetland resource and buffer areas, including recreational uses such as this trail, provided that such uses are otherwise consistent with the EQ Policies of the LCP and adopted management plans. Further, EQ Policy 4.2.2.2 specifies that for Neary Lagoon, the 100-foot buffer applies only to *non-recreational* land uses such as parking and housing (i.e., the 100-foot buffer is not an absolute requirement prohibiting all development). With respect to the adopted management plan for the area, the NLMP clearly supports the expansion of public recreational features within the Neary Lagoon Management Area. In addition to supporting improvements to a network of floating boardwalks that cover lagoon waters, the NLMP anticipates a bicycle-serving trail in the project alignment. Specifically, NLMP Community Facilities Policy 8.4.1 directs the City to “investigate a bicycle path along the railroad tracks” as a means of balancing the need for improved bicycle access and circulation with the imperative to protect wildlife and minimize impacts of human activities in areas closer to the Lagoon itself and to higher-value open water and riparian habitat.

The Appellant also notes that the Neary Lagoon Management Plan calls for protection and management of “the west side riparian forest and mixed oak woodland area” (NLMP EQ Policy 3.4) and for securing improved management control of “the riparian forest and mixed-oak woodland area adjacent to the west boundary of the management area” (NLMP EQ Policy 3.4.1). The area referenced by these policies is not explicitly delineated in any NLMP map, and the construction of the retaining wall for the proposed trail would result in the removal of some riparian tree species and oaks; however all of the affected trees are located either (1) on the south and southwest sides of the Lagoon, and are separated from the large, contiguous area of riparian forest on the Lagoon's west side by Neary Lagoon Park (which consists of developed recreational features like tennis courts and a playground) and the wastewater treatment plant, or (2) on the east side of the Lagoon. In fact, only a small portion of the project area is within the management area to which NLMP EQ Policy 3.4 applies. While NLMP EQ Policy 3.6 calls for enhancing and restoring the riparian forest in the management area more broadly (i.e., not just on the west side), and NLMP EQ Policy 3.3 requires protection of riparian areas by restricting and limiting access by the public and domestic pets, as noted above the NLMP as a whole clearly envisions and allows public access and recreation related development. In short, the Appellant cites to many generally-applicable policies within the LCP and NLMP with respect to arguing project inconsistency with the LCP and NLMP. However, as discussed above, these broadly-applicable policies do not necessarily warrant a finding of LCP or NLMP inconsistency on the basis of qualifiers (exceptions) within those same policies, more specifically-applicable policies within the LCP and NLMP, and the fact that even as designed the project can be found to be consistent with some of the broadly-applicable policies.

In addition, the City analyzed several alternative alignments to avoid impacts to riparian vegetation. First, the City considered a trail alignment along the north (or inland) side of the railroad tracks as-envisioned in the MBSST Master Plan, but concluded that this would result in greater impacts to the hillside and to vegetation in the project area than the approved south-side configuration:

A north-side trail alignment would have required extensive grading and vegetation removal to construct an engineered retaining wall, sufficiently stout to support loads from trains' diesel engines. A retaining wall at this location would require approval of a Slope Modification/Variance. Further, policies 5.3 & 5.3.3 of the LCP strive to protect the visual character of the Neary Lagoon mapped escarpment area (Figure 2-7 in the NLMP) through preservation of native vegetation. By placing the trail on the south side of the tracks there will be less riparian vegetation impacts and the tall vegetation on the north side of the tracks will be preserved as called out in the NLMP, while vegetation upslope from the proposed retaining walls will also be maintained (Planning Commission Agenda Report, p. 3).

The City also considered routing the trail through the existing La Barranca Park, but connecting the trail back to the railroad right-of-way would require spanning the thirty-five foot elevation gap between the western end of the park and the parallel portion of the railroad bed with a large concrete ramp structure, which would also displace hillside vegetation and have significant visual impacts on the area. Moreover, this alternative would not have avoided placement of a trail alongside the rail in the area adjacent to the Neary Lagoon drainage feature, where the trail would come closest to open water wetlands. Additionally, directing bicycle traffic through La Barranca Park, which is essentially linear, would negatively impact the park and its current users, many of whom are elderly.

Finally, the City explored routing the trail onto existing roadways, which would have avoided impacts to the vegetated slope areas, but at the expense of trail user safety and trail accessibility, both of which are fundamental to the purpose of the project. As the City explained:

The City analyzed...an alternative alignment on Bay Street from the intersection of Bay Street/California Street to the intersection of Bay Street/West Cliff Drive and an alternative alignment on California Street from the intersection of California Street/Bay Street to the intersection of Laurel Street/Pacific Avenue. These alternative alignments were not pursued further because they would not meet the objective of maximizing safety of trail users and encouraging new riders; these roadways currently experience high bicycle and pedestrian collisions. In addition, these alignments would have slopes that exceed 8.33 percent, which would result in the alignments not being compliant with the Americans with Disabilities Act (ADA) (Planning Commission Agenda Report, p. 4).

A trail-only project (i.e., a project where the trail would be constructed over/in the same location as the railroad tracks and the railroad tracks would not be used by trains) was not considered because this segment of the rail line is actively used by Roaring Camp Railroad, which has track rights to over a thousand feet of track west of the wye that it uses to turn the train. This alternative was also not considered because it is the Applicant's intention that the Santa Cruz Branch Line corridor be used for both rail and trail, including this project segment, and a trail-

only project would be inconsistent with that Applicant objective. Also, this kind of alternative, though it could likely have served to avoid most if not all of the need for retaining walls and vegetation removal, would still have the same wetland/riparian habitat locational issues (in relation to the Lagoon and the drainage feature) as would the project. The approved project serves to site the trail in an area as far from the Lagoon and the drainage feature as possible.

Thus the City analyzed several alternatives for the project and identified no feasible, less environmentally damaging alternative. This is consistent with the requirements of EQ Policy 4.2.2.3, which allows certain types of development even in wetlands themselves (in addition to in the prescribed 100-foot buffer from them) “where there is no feasible, less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.”

LCP EQ Policy 4.2.2 also requires the City to minimize the impact of allowable development upon riparian and wetland areas. The City has done so in this case by locating the trail on the south side of the tracks (thereby preserving the riparian vegetation that is directly contiguous to the Lagoon); by requiring construction best management practices designed to prevent runoff into the riparian area; by including storm drainage in the design of the trail; and by requiring all trees removed to be replaced at a 1:1 ratio, all heritage trees removed to be replaced at a 2:1 ratio, and all riparian trees removed to be replaced at a 3:1 ratio at another City-owned wetland site.⁷

The Appellant also contends that the City-approved project violates LCP EQ Policy 4.5’s broad requirement to “protect and minimize the impact of development on bird, fish, and wildlife habitat in and adjacent to waterways.” Specifically, the Appellant claims that the presence of a path that allows bicycles in the project area will pose a risk to wildlife movement from and to Neary Lagoon. However, the NLMP already identifies the approved alignment as the least impactful bicycle route through the area, and the City has minimized the impact of the approved project to the greatest extent feasible, as required by the LCP, through measures such as storm drainage and minimal lighting from International Dark-Sky Association-approved fixtures.

In summary, while the project will result in some direct impacts to riparian vegetation (including some riparian trees), heritage trees (including oaks), as well as indirect impacts to Neary Lagoon more broadly (i.e., due to increased use of the area), the City has provided substantial evidence to support its position that this public trail improvement project, as conditioned by the City, is allowable in the area in question under the LCP, and that it appropriately mitigates for unavoidable impacts as required by the LCP. For all these reasons, the City’s approval does not raise a substantial issue of LCP conformance with respect to wetlands, riparian vegetation, and ESHA protections.

2. Monarch Butterfly Habitat

The City’s LCP contains specific protections for monarch butterflies, including EQ Policy 4.5, which requires protection of “rare, endangered, sensitive and limited species and the habitats supporting them as shown in Map EQ-9” or as determined through the planning and review

⁷ The City’s LCP requires replacement at a 2:1 ratio for significant vegetation, but does not specify where the new trees must be planted.

process, as well as LCP EQ Policy 4.5.3, which requires the City to “protect monarch butterfly overwintering sites and ensure adequate buffering of these sites from development.” See **Exhibit 6** for these policies and map.

The Appellant contends that the City-approved project violates EQ Policy 4.5.3 because the construction of the trail will result in the removal of one blue gum eucalyptus tree in a eucalyptus grove located upslope of the Neary Lagoon drainage outlet. This grove is not identified in Map EQ-9 as a monarch butterfly overwintering roosting site. Even so, the City undertook a biological assessment of the site, including a field review that was conducted by a biologist in December 2018 (when monarch butterflies are present in Santa Cruz), in order to ascertain the quality of the eucalyptus grove as overwintering monarch habitat. The field review confirmed the findings of the City’s research, which showed that a lack of low branches and nearby nectar sources in this eucalyptus grove (which would be needed to support overwintering monarch butterflies) make it unlikely that the site does or will provide the quality of habitat necessary to support overwintering monarchs, and likely explains the fact that monitoring efforts by the California Department of Fish and Wildlife and the Xerces Society⁸ have not recorded overwintering monarch butterflies in the vicinity of the subject eucalyptus grove since the 1980s. This is not to say that monarch butterflies do not use the site at all — the City in general is habitat for this species, and monarchs are routinely observed even in the most urbanized parts of Santa Cruz, using non-native plants that thrive in disturbed areas as nectar sources — but rather that it does not provide the overwintering roosting habitat that is protected in the City’s LCP.

It should also be noted that in spite of the limitations of this site as monarch habitat (and the fact that the California Invasive Plant Council lists blue gum eucalyptus trees as an invasive species in coastal areas of California, including Santa Cruz), the City revised the design of the retaining wall in the vicinity of the eucalyptus grove to reduce the number of trees to be removed from six to one. This change was made in response to comments from an individual affiliated with the Appellant group on the City’s Initial Study/Mitigated Negative Declaration.

In summary, the City in this case rendered its CDP decision based on evidence showing that the eucalyptus grove is not a monarch butterfly overwintering roosting site protected by the LCP, and did so after modifying the project to reduce the number of trees to be removed. Thus, the City’s approval does not raise a substantial issue in terms of the project’s conformance with the certified LCP’s monarch butterfly protections.

3. Other Contentions

The Appellant further contends (1) that the City’s alternatives analysis is not supported by adequate evidence to satisfy the requirements of LCP EQ Policy 4.2.2.3; (2) that the City should require, rather than recommend, the presence of a Native American monitor during earth moving activities to achieve consistency with LCP Cultural Resources (CR) Policy 1.3.2, and; (3) that the approved project will not enhance coastal access because the City-approved trail is duplicative of existing bike lanes in adjacent neighborhoods and will not be accessible to nearby residents because of “the location of the trail along a steep slope.”

⁸ The Xerces Society for Invertebrate Conservation is an international nonprofit organization that protects the natural world through the conservation of invertebrates (with a special focus on insects, including butterflies) and their habitats.

With respect to the alternatives analysis, EQ Policy 4.2.2.3 does not provide specific requirements as to the level of analysis that must be undertaken. In this case, the City undertook the alternatives analysis described above and identified no feasible, less environmentally damaging alternative. In that analysis, the City adequately identified the tradeoffs associated with the other possible alignments and project permutations in a manner that allowed the City to make the requisite findings under the LCP.

With respect to cultural resources, LCP CR Policy 1.3.2 requires an archaeological observer to be present when certain types of ground-disturbing work, including earth-moving, are conducted on or in the vicinity of known archeological sites, and also requires a Native American observer to be present during earth-moving for projects on or in the vicinity of known burial or most sacred sites. The approved trail alignment does overlap with documented prehistoric resource areas, and the City's approval included adoption of all mitigation measures identified in the environmental review process to avoid impacts to cultural resources. Among these measures is an "Environmentally Sensitive Area Action Plan" and "Archeological Monitoring Plan" that would establish an Archeological Monitoring Area (AMA) that would include all identified prehistoric resource areas within the project area. Any ground disturbing activities within the AMA would be monitored by both a consultant archeologist and a Native American representative, consistent with the requirements of CR Policy 1.3.2.

Lastly, with respect to the Appellant's contentions that the new trail would be duplicative of existing bike lanes and not accessible to others, while other bike lanes exist in the surrounding area (chiefly along Bay Street and West Cliff Drive), all these existing bike lanes require bicyclists to share the road with motorized vehicles. In contrast, the approved project would provide a protected riding experience for cyclists that would also connect to other protected trail segments along the Main Beach/Santa Cruz Beach Boardwalk area, and ultimately along the entire Santa Cruz Branch Rail Line under the Applicant's proposed overall project, and would thus facilitate alternative transportation along the Santa Cruz County coastline that minimizes the risks of riding along with traffic. The City-approved trail project thus provides a distinct bicyclist amenity that is not the same as (and thus not duplicative of) existing bicycle infrastructure in the area; rather, it provides a bicyclist experience that is safer, more scenic, and, consequently, more welcoming to cyclists (as well as to pedestrians, including people who use wheelchairs, families with strollers, and others currently using the sidewalk, including nearby residents) than riding on the road. As to the slope of the trail, it averages 1.5% and does not exceed 2% at any point along the segment, which exceeds the requirements for ADA accessibility.⁹ There is nothing to indicate that the slope of the approved trail will preclude its use by people with disabilities.

It is also important to note that the City-approved project (and the larger trail of which it is intended to be a part) is much more than just a means of alternative transportation. It is also intended to enhance coastal visitor access and connectivity between recreation sites and visitor-serving facilities up and down the Santa Cruz coast. It would allow visitors and residents who use wheelchairs, who currently have limited access to Neary Lagoon and only one ADA-

⁹ Generally speaking, the maximum allowable running slope (i.e., the slope in the direction of travel) for ramps under the ADA is 8.33%, and the maximum allowable cross slope (i.e., the slope perpendicular to the running slope) is 2%.

accessible route between the west side and the Main Beach area,¹⁰ to tour these areas and avoid steep grades. In fact, the approved project would offer a more gradual slope from the west side (which is located on a former marine terrace about 35 feet above the San Lorenzo River flood plain) to the beach and downtown area than any surface street in the vicinity (i.e., Laurel Street between California and Felix Streets, Beach Street between Pacific Avenue and West Cliff Drive (11% grade), and West Cliff Drive between Beach Street and the Pacific Avenue/Center Street roundabout (8% grade)).

In short, the trail will serve multiple purposes that are not adequately or comprehensively met by existing infrastructure in the project area, including, but not limited to, dramatically improved bicycle and pedestrian access between two key coastal recreation points, and will ultimately facilitate enhanced pedestrian/bicyclist access overall through Santa Cruz County. The City's approval of the project does not raise substantial LCP issues in terms of the other issues raised by the Appellant.

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 take jurisdiction de novo over a CDP application (i.e., as a new application) 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. First, in terms of the degree of factual and legal support of the City's position, the City appropriately analyzed the proposed project against the LCP, and provided substantial evidence to support its decision. First, in terms of wetlands, riparian vegetation, and ESHA, the City's evidence showed that the project is allowable in the approved location per LCP policies, that alternatives were analyzed and none were identified that were both feasible and less impactful, and project impacts could be appropriately mitigated as is required by the LCP. Second, for monarch butterflies, the site is not identified as a monarch overwintering site in the City's LCP and is considered low-quality habitat, and the City modified the project to substantially reduce impacts to eucalyptus trees in response to stated public concerns. With respect to cultural resources, a Native American monitor will be present for earthmoving activities that are in the vicinity of documented cultural resources, as recommended

¹⁰ Currently, the only pedestrian access between the west side and the Main Beach/downtown area that avoids steep slopes is on West Cliff Drive between the top of the Beach Street hill and the Pacific Avenue/Center Street roundabout. West Cliff Drive is one-way along this road segment and is flanked by an at-grade, unprotected, one-way bicycle lane on one side and on the other side by an eight-foot-wide sidewalk intended for shared use by pedestrians and uni-directional bicycle traffic. Though it does provide a relatively gentle slope, this route is constrained and requires multiple transportation modes to share a relatively small space.

by the tribal representatives consulted by the City during the environmental review process. Finally, the approved project will provide a new and unique coastal access and recreation opportunity, including by providing ADA-accessible access between two key coastal recreation areas where none currently exists. Rather than duplicating existing access opportunities as the Appellant suggests, it will enhance them as required by the LCP and the Coastal Act. Thus, the City has provided adequate factual and legal support for its decision that the approved development would be consistent with the certified LCP.

As to the extent and scope of the City-approved project, although a relatively large project in terms of total length, both taken in isolation and in the context of the larger vision for the MBSST in Santa Cruz County, the approved project will provide significant improvements to coastal public access while limiting significant coastal resource impacts and mitigating for those that are unavoidable. It is worth keeping in mind that the proposed development is relatively low-impact, public-benefit-oriented infrastructure, not private development. In that context, the extent and scope of the project do not argue for a finding of substantial issue.

The resources involved in the application are clearly significant coastal resources. In fact, public recreational access and protection of ESHA and wetland/riparian areas are among the highest of LCP objectives. However, as described in the findings above, the City provided a reasoned analysis of the issues pertaining to those resources, and resolved any LCP issues associated with the project in a manner appropriate to the specific facts of the project and the location, arguing for a finding of no substantial issue on this point. The City's action here does not raise precedential issues with respect to LCP interpretation for much the same reason.

And finally, although the coastal resources and associated LCP issues involved with this project are obviously the types that have both regional and statewide significance, these issues were appropriately arbitrated under the specific policies of the local LCP in this case, again arguing for a finding of no substantial issue. In other words, as discussed in this report, the specific proposal here is in fact contemplated by both the LCP and the NLMP, meaning that many of the resource policy issues alleged by the Appellant have already been addressed via the LCP and NLMP policies, as discussed above.

For the reasons stated above, the Commission finds that Appeal Number A-3-STC-19-0106 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 DOCUMENTS¹¹

- Appeal File A-3-STC-19-0106

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- City of Santa Cruz
- Save Our Big Trees

¹¹ These documents are available for review in the Commission’s Central Coast District office in Santa Cruz.