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# W22c

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## STAFF REPORT: CDP APPLICATION

**Application Number:** 3-20-0088

**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.

**Project Description:** Implement the City's Beach Management Plan at Cowell and Main Beaches for five years, including provisions to address general beach area maintenance activities (e.g., sand sifting, debris removal, etc.); kelp removal; 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; special and temporary events; safety facilities and operations; flood control/drainage discharge operations; beach area signage; the number and location of volleyball courts; and implementing a midnight-to-one-hour-before-sunrise closure of the dry sand areas, except that beach users will continue to be able walk across the dry sand to access the wet sand area and the ocean during that time frame.

**Staff Recommendation:** Approval with Conditions

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## **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 recreational beach access opportunities. Main and Cowell Beaches are some of the most popular beaches in all of northern/central California, and provide the beachside setting for the City's main tourist area, fronted by the Santa Cruz Beach Boardwalk amusement park and a number of other commercial establishments, as well as the City's Municipal Wharf. This beach and commercial area sees millions of visitors per year, many drawn to the area for a day at the beach.

The City of Santa Cruz has been authorized by the Commission to implement similar beach management plan activities at this location since 1995 (through CDPs 3-95-043 and 3-11-027). In general, the City's BMP, and the Commission's authorization of it to date, have performed as intended and have provided for enhanced public recreational access 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 the potential for them to impact general public recreational access to the beach and ocean), questions related to kelp removal and beach grooming and the effect of such activities on water quality and the beach environment, and most recently the midnight-to one-hour-before-sunrise dry sand curfew, again in terms of its potential to impact public recreational access. Overall, the BMP is (and has long been) multifaceted, and includes provisions for regular maintenance operations (e.g., beach grooming, including to accommodate litter/debris 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 offering beach and ocean equipment rentals), recreational and educational programs (e.g., City of Santa Cruz Junior Lifeguard and beach volleyball programs), the Beach Boardwalk's bandstand, special and temporary events, flood and drainage discharge operations, and beach area signage. 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. Staff believes that the proposed BMP strikes a reasonable balance between various competing uses at these extremely popular beaches, and further believes that it is appropriate to provide the City some additional flexibility in managing beach area activities in this way. Accordingly, staff believes that these revised elements of the BMP are consistent with the Coastal Act's public recreational access and marine resource protection policies.

The City is also proposing to extend the previously authorized (i.e., at Cowell Beach through 2019) dry sand nighttime curfew (i.e., in this case extending from midnight to one hour before sunrise) to also include Main Beach. In past proposed nighttime beach curfew cases, the Commission has generally raised concerns about their potential to

adversely impact nighttime public recreational access (and did so here in its previous approval of the Cowell Beach curfew). The Commission has generally only approved such nighttime beach (and other public access and recreation area) closures when there are demonstrable problems that require such action, and when the scope of the closure is limited and tailored to address the identified problems in a way that does not significantly impact bona fide nighttime public recreational access activities (e.g., stargazing, beach walks, water recreation, etc.). In 2014, the Commission found that the Cowell Beach dry sand curfew met these requirements, but also conditioned its approval to require that the City develop and submit information to help the Commission to better understand the need for the curfew and its effect on public recreational access and other coastal resources.

In support of the current BMP CDP application, the City has provided evidence that there is a continuing nighttime public safety problem on the beaches stemming from illicit activities such as drug use and significant littering, both of which are associated with certain nighttime activities on both Cowell and Main Beaches. These problems are leading to coastal resource impacts through beach and ocean area degradation that affect use of the beaches during the daytime. The City believes that the nighttime curfew restrictions that were imposed at Cowell Beach reduced such public safety and coastal resource problems significantly, and resulted in an overall cleaner and safer sandy public beach and ocean environment for all users at all times.<sup>1</sup> The City further reports that it has no evidence that the imposition of the curfew has significantly adversely impacted bona fide nighttime public recreational beach access.

Two key components of the proposed nighttime sandy beach restrictions relate to effects on public recreational access. First, the dry sand beach closure only applies from midnight to one hour before sunrise, when there are very few public recreational access users to begin with, and those users may still 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, etc.). Thus, the beach use limitations during these wee hours of the night and very early morning are not expected to lead to any significant public recreational access impacts because there is very little such access to begin with at this time of night. Second, the City reports that the sandy beach nighttime closure has reduced beach degradation (from litter, needles, urine/feces, etc.) associated with nighttime use, leading to a cleaner and safer beach and ocean environment for all users during the daytime when the vast majority of beach use in Santa Cruz occurs. Thus, the nighttime closure's already limited public recreational access impacts are minimized, and are also offset by increased cleanliness and safety of the general beach environs, which enhances public recreational access more generally.

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<sup>1</sup> And the City reports similar results at Main Beach in the time since nighttime restrictions were imposed there in late 2019 as a means to abate a City-declared public nuisance (and thus not initially requiring a CDP authorization at that time, but for which a CDP is now being requested in this application to continue in a similar manner).

To date, the key area of controversy associated with the proposed nighttime restriction has not been in terms of public recreational access per se, but rather in terms of the effect of the nighttime beach use restrictions on unsheltered individuals who have in the past sometimes looked to the sandy beaches in Santa Cruz for a place to sleep at night. The primary substantive concern raised is that while the nighttime curfew, on its face, applies equally to all individuals who might attempt to visit the beach at night, it may disproportionately impact the unsheltered individuals who might look to sleep on the beach at night, representing a potential environmental justice impact that the Commission must take into consideration in its deliberations.<sup>2</sup> In order to address this concern, the Commission must do two things. First, it needs to ensure that the unsheltered members of the community have access to the Commission's process to make their views known and to help shape the debate on a potential Commission decision. Second, the Commission must ensure that its decision equitably addresses and distributes coastal resource impacts and enhancements for all, including the unsheltered community.

To ensure procedural due process with respect to environmental justice, staff postponed the prior Commission hearing on this proposed BMP (which was previously scheduled for the November 2019 hearing) in order to allow for additional outreach to the unsheltered community, including additional outreach to groups who advocate for unsheltered individuals, and targeted outreach to known groups in Santa Cruz that advocate for unsheltered community interests. The City has since performed such additional outreach and notice on these issues, and has conducted two additional public hearings on the issues since that time, including one at the City Council level, allowing for more input into the City's proposal. In those additional hearings many new voices were heard, including those representing unsheltered interests, but the predominant majority of public sentiment continued to favor the nighttime restrictions. At the same time, the City reaffirmed its commitment to its unsheltered community by, among other things, working with regional partners to increase emergency shelter capacity, recruiting a Homeless Response Manager to coordinate internal and external efforts related to homelessness, and helping to relocate the Homeless Garden Project, all in just this year. Staff also reached out, both through holding an "open house" with unsheltered advocacy groups and individuals, as well as through expanded noticing and scheduling the hearing for March in Scotts Valley (just a few miles from Santa Cruz) to make sure to maximize the ability of all parties to participate in the Commission's process. Staff believes that appropriate efforts have occurred to maximize the ability to participate by all parties, including the unsheltered community.

With respect to substantive environmental justice concerns, although the nighttime restrictions would prohibit anyone from sleeping overnight on the beach, staff believes that such an impact does not raise coastal resource issues. Although the nighttime restriction does present a further limitation on available places to sleep, and thus imposes a burden on the unsheltered population, it would actually enhance public

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<sup>2</sup> As discussed further in the environmental justice section of this report, the unsheltered community qualifies as environmental justice community to which the Commission's environmental justice policy and the Coastal Act's environmental justice provisions apply.

recreational access on the whole, which, along with other coastal resource protections, is the type of access the Coastal Act is designed to protect. Specifically, the Coastal Act promotes maximum public recreational access, but in a manner that takes into account the need to protect coastal resources, including sandy beaches and the ocean, from potential adverse impacts that could result from uncontrolled and/or poorly controlled access. Staff believes that the use of a public space for shelter because of a person's lack of financial means to afford housing elsewhere is a terrible and tragic circumstance, and an issue of concern to coastal communities and all who enjoy the State's coastal zone and its beaches. That said, and although legitimate hardships may be compelling certain people to set up camp on beaches, those hardships are a function of the homelessness crisis plaguing much of the nation at the present time, not of impeded public recreational access. The Coastal Act's requirement to promote public recreational access to and along the coast was not intended to allow those areas to be used as shelter. In fact, the Act expressly establishes public recreational access uses as having priority over residential ones, and expressly provides for limitations to avoid undue coastal resource degradation from use of all types. In short, in order to provide for ample public recreational access under the Coastal Act, the Commission is not required to allow people to live on the beach. Accordingly, the Commission need not allow people to establish homes and campsites on the State's beaches as a means of ensuring access to coastal beach and ocean resources, especially when it could have a negative impact on both the resource and public recreational access by other members of the public. Thus, staff believes that an action here to allow limited nighttime dry sand restrictions is appropriate under the Coastal Act, and would not unduly nor inappropriately burden one group more than another with regards to coastal access for public recreation.

Perhaps just as critically, the ability to address the root causes of the homelessness crisis are essentially outside the purview of the Commission and its Coastal Act/coastal resource mandate. Staff is sensitive to the challenges faced by the unsheltered, and is supportive of means within the Commission's mandates for helping to ease their burdens, but much of the crises facing this community relate to broader social services and socioeconomic conditions that are better addressed by local governments and other applicable agencies under their power to regulate for public health, safety, and welfare. When such public health, safety, and welfare objectives overlap and dovetail with coastal resource protection objectives under the Coastal Act, then there is obviously a role for the Commission to play. Here, though, the City's proposed restrictions seem like a reasonable response to the problems presented, will have limited effects on public recreational access, and should actually enhance such access and coastal resources more broadly. As such, staff recommends that the Commission approve the CDP for the BMP. The necessary motion is found below on page 7.

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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:** Cowell and Main Beach Area Photographs

**Exhibit 3:** Proposed Beach Management Plan

**Exhibit 4:** Nighttime Beach Restrictions Summary Report for Main and Cowell Beaches

**Exhibit 5:** Correspondence Received

**Exhibit 6:** Summary Report of City's Recent Efforts to Find Solutions and Respond to the Homelessness Crisis

## I. MOTION AND RESOLUTION

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

**Motion:** I move that the Commission approve coastal development permit number 3-20-0088 subject to the conditions set forth in the staff recommendation, and I recommend a yes vote.

**Resolution to Approve CDP:** The Commission hereby approves coastal development permit number 3-20-0088 and adopts the findings set forth below on grounds that the development, as conditioned, 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. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** See Special Condition 2 below.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Approved Beach Management Plan.** This CDP authorizes implementation of the City's Beach Management Plan for Main and Cowell Beaches (dated received in the Coastal Commission's Central Coast District Office on February 11, 2020; see **Exhibit 3**).
2. **CDP Duration.** The authorization provided by this CDP shall expire five years from the date of Commission approval (i.e., on March 11, 2025).
3. **Coastal Hazards.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (a) that the project area is subject to coastal hazards, including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, tidal scour, storms, tsunami, coastal flooding, landslide, earth movement, and the interaction of all of these, many of which will worsen with sea level rise; (b) to assume the risks to the Permittee and the properties that are the subject of this CDP of injury and damage from such hazards in connection with this permitted development; (c) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (d) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the CDP 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 and (e) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the Permittee.
4. **Liability for Costs and Attorneys' Fees.** The Permittee shall reimburse the Coastal Commission in full for all costs and attorneys' fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and/or (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 CDP, the interpretation and/or enforcement of CDP terms and conditions, or any other matter related to this CDP. 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, its officers, employees, agents, successors and/or assigns.



## IV. FINDINGS AND DECLARATIONS

### A. Project Location and Description

#### Project Location

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 **Exhibits 1 and 2** for location maps and beach area photos).<sup>3</sup> Offshore is the Monterey Bay National Marine Sanctuary, the largest of the thirteen such federally protected marine sanctuaries in the nation.

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, shrinking to as little as 100 feet at certain points (and essentially zero feet at the upcoast end of Collins Cove) during the winter months. During the summertime, Main Beach provides extensive sandy beach areas of up to 500 feet wide, and both beaches provide a beach environment with favorable wave and water conditions suitable for many activities including surfing, swimming, volleyball, bodysurfing, and sunbathing. In addition, the Santa Cruz Beach Boardwalk,<sup>4</sup> other 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, and gain access to the sandy beach area from multiple accessways extending along the affected shoreline.<sup>5</sup> The beaches are open to the general public and there are no restrictions on hours of use except for nighttime curfews applicable to the dry sandy areas between the hours of midnight and one hour before sunrise currently imposed by the City under its public nuisance authorities,<sup>6</sup> where public access users are allowed to use the dry sand area to access the wet sand area and the ocean (i.e. for those who may want to go for a late night walk along the beach or go for a nighttime swim).

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<sup>3</sup> 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 and subject to a public access easement, but all of this area is publicly used and available beach space, and the BMP applies to all of it.

<sup>4</sup> The Boardwalk is the West Coast's largest seaside amusement park with over 35 rides and an estimated one-million visitors annually.

<sup>5</sup> Including direct public access from the publicly available (free of charge) Boardwalk, City pathways along Beach Street, and access at the foot of the Wharf.

<sup>6</sup> The Cowell Beach nighttime restrictions were also covered by CDP 3-11-027 through November of 2019, and the restrictions on both beaches are proposed to be permitted through this CDP application.

### **Project Background**

In 1995, the City's original BMP was added to the City's Local Coastal Program (LCP) to help provide guidance for decisions in the beach area, and the Commission approved initial implementation of the BMP through a CDP for a five-year period that same year.<sup>7</sup> The Commission then approved two amendments to that CDP continuing BMP implementation, and in 2006 the authorization period was reduced to three years in light of Commission concerns at the time regarding kelp removal and beach grooming operations.<sup>8</sup> At that time the Commission was interested in better understanding the balance being struck between facilitating public 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 (authorized through CDP 3-11-027 in November of 2014), it was designed to further respond more comprehensively to both the problems the City previously identified as affecting public 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 the requirement that the City undertake 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 information to inform future decisions regarding the protection of coastal environmental and recreational resources in 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 help determine, 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

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<sup>7</sup> LCP amendment 1-95 approved in March 1995, and CDP 3-95-043 approved on May 11, 1995.

<sup>8</sup> CDP amendments 3-95-043-A1 approved on September 14, 2000 for an additional five years, and 3-95-043-A2 approved on August 10, 2006 for an additional three years.

continues its efforts to identify the cause of the bacterial problem at Cowell Beach.<sup>9</sup>

The 2014 BMP amendment (CDP 3-11-027-A1) authorized implementation of 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). Ultimately, CDP 3-11-027, as amended, expired in November of 2019.

### **Project Description**

The City is requesting a CDP to authorize BMP implementation for the next five years. The proposed BMP provisions are substantially similar to provisions previously authorized through CDP 3-11-027, as amended, 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). Additionally, in response to feedback provided from Coastal Commission staff to the City, the seasonal Santa Cruz Seaside Company picnic deck and volleyball courts have been removed from the BMP (the City's volleyball courts remain in the BMP). The City is also proposing to extend the previously authorized (i.e., at Cowell Beach through 2019) dry sand nighttime (i.e., in this application from midnight to one hour before sunrise) curfew to also include Main Beach. See **Exhibit 3** for the proposed BMP. Specific components of the BMP are described in more detail immediately below.

### **Organized Recreational and Educational Programs**

The proposed BMP limits use of Main and Cowell Beaches for organized 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 recreational 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 both Cowell and Main Beaches. 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.

### **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

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<sup>9</sup> In 2014, the Cowell Beach Working Group was formed to study and address the vexing water quality issues at Cowell Beach. The group, facilitated by Save The Waves, is comprised of representatives from the City of Santa Cruz, Santa Cruz County, Surfrider Foundation, and the Sierra Club.

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 that are generally scheduled more on an ad hoc basis, such as weddings or 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 the 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 of the total beach area (including the volleyball courts, which occupy about 10% of the beach),<sup>10</sup> except in special circumstances, and must be configured in such a way as to avoid stairways and other vertical accessways to the beach, to avoid blocking or significantly affecting lateral access along the beach, and to otherwise minimize impacts on general public recreational beach use. For any special circumstances, the Executive Director must be noticed and shown that such circumstances: (1) will not adversely impact public 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 to retain and operate the two public volleyball courts located on Cowell Beach (**Exhibit 1**). This area is not as intensively used as other areas of Cowell Beach because of its distance away from the shoreline. Both courts will be available for free public use all year round.

#### Boardwalk's Bandstand, Deck, Walkways

The BMP previously authorized the Santa Cruz Seaside Company (i.e., the "Boardwalk") to construct a temporary approximately 3,800-square-foot deck 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 the Seaside Company volleyball courts due to concerns that these public beach areas were being put disproportionality to private use

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<sup>10</sup> When the Seaside Company 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.

by the Boardwalk (for private parties, etc.).<sup>11</sup> However, the current BMP proposal continues to authorize the Boardwalk to construct a temporary beach bandstand (an approximately 2,000-square-foot stage) to be 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) awards, sand castle contests, as well as the “Summertime, Summer Nights” free public concerts and movie series. These free activities organized and managed by the Boardwalk are provided free of charge to the public, and are extremely popular.

#### Kelp Removal and Beach Grooming

The BMP contains similar kelp removal activities as authorized by past CDPs, 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 associated with both high flying insect populations and potentially large beach displacement areas due to kelp/insects. 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 11am, but will be allowed beyond that time as necessary to meet the goals of the BMP. 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 existed at Cowell Beach and implemented a one-year beach curfew there (from midnight to one hour before sunrise). The City indicated that it took this action to address criminal and related activities (e.g., illegal drug use, late night loitering, littering, public defecation/urination, etc.) that had been taking place at Cowell Beach during the nighttime hours and leading to beach area impacts and public safety problems. 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 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.

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<sup>11</sup> 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.

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 1,200 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 the ocean, 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 public uses for which that portion of 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 and the ocean during the curfew hours, but it could not otherwise be used for any other purpose at that late night time.

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 recreational access. In past proposed nighttime beach curfew cases, the Commission has generally raised concerns about their potential to adversely impact nighttime public access and recreation (and did so in this case for Cowell Beach). The Commission has generally only approved such nighttime beach (and other public access) closures when there are demonstrable problems that require such action, and when the scope of the closure is limited and tailored to address the identified problems in a way that does not significantly impact bona fide nighttime public access activities (e.g., stargazing, beach walks, water recreation, etc.). In 2014, the Commission found that the Cowell Beach dry sand curfew met these requirements and approved CDP amendment 3-11-027-A1 authorizing same, but also conditioned its approval to require that the City develop and submit information to help the Commission to better understand the need for the curfew and its effect on public recreational access and other coastal resources.

In the time since the Cowell Beach curfew was instituted, the City has identified similar issues and concerns regarding continuing nighttime public safety and related problems on Main Beach (including the same types of activities that led to the Cowell Beach curfew, such as illegal drug use, late night loitering, littering, public defecation/urination, etc.), including as identified in the City's "Nighttime Beach Restrictions Summary Report for Main and Cowell Beaches" (see **Exhibit 4**).<sup>12</sup> This CDP application therefore

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<sup>12</sup> Note that the correspondence attachment of the report is not included in this exhibit due to its large size. However, in that correspondence, received as part of the September 10, 2019 City Council meeting to discuss restricting nighttime beach access on Main Beach, the public comments were overwhelmingly in support of the beach restrictions: 359 people voiced support (96%), 8 voiced opposition (2%), and 6 voiced unclear positions (2%). The correspondence attachment is available for review in the Coastal Commission's Central Coast District Office in Santa Cruz.

proposes to authorize the midnight-to-one-hour-before-sunrise curfew for both Cowell and Main Beaches for the next five years. See the proposed BMP in **Exhibit 3**.

## **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 non-binding guidance to the Commission.

## **C. Public Recreational Access**

Coastal Act Sections 30210 through 30214 and Sections 30220 through 30224 specifically protect public recreational access, including:

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

**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.

The Santa Cruz Beach Boardwalk, other 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.<sup>13</sup> 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. Due to 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 farther 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 recreational access opportunities along its approximately one-mile length.

The proposed BMP largely carries forward the previously authorized management parameters that have proven successful for many years at managing heavy recreational use and providing 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)<sup>14</sup> to ensure that these activities do not impact general public recreational access to the beach, including lateral access. 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,

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<sup>13</sup> Santa Cruz County shoreline and beaches, including those here in the City of Santa Cruz, provide arguably the warmest and most accessible beaches and ocean waters in all of Northern California. With the large population centers of the San Francisco Bay area, San Jose, and the Silicon Valley nearby, these areas are significant visitor destinations. Not only are north Monterey Bay weather patterns more conducive to beach recreation than the rest of the Monterey Bay area, but these beaches are generally the first beaches accessed by visitors coming from the north of Santa Cruz. With Highway 17 providing the primary access point from the north (including from the San Francisco Bay Area, San Jose and the Silicon Valley) into the Monterey Bay area, the City of Santa Cruz is the first coastal area that visitors encounter upon traversing the Santa Cruz Mountains. With the added draw of the Boardwalk and the City's other beach area attractions, Cowell and Main Beaches are the most popular beaches in all of the Monterey Bay area, and likely the entire Central Coast.

<sup>14</sup> These programs are a service to the community and generate limited revenue, which is returned to the City's general fund.



these elements of the BMP maximize public recreational access opportunities, consistent with the Coastal Act.

In general, the City's BMP and the Commission's authorization of it to date have performed as intended and have provided for enhanced public recreational access 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 most recently the midnight-to-one-hour-before-sunrise dry sand curfew, again in terms of impacts to public recreational access.

The City's BMP has long been multifaceted, and has long included provisions for regular maintenance operations (e.g., beach grooming, including for litter removal and for leveling and contouring of sand for volleyball tournaments, etc.), seasonal debris removal (e.g., removal of logs and other debris washed down the San Lorenzo River), limited public-oriented commercial uses (e.g., beach concessionaire equipment rentals), recreational and educational programs (e.g., Junior Lifeguard and beach volleyball programs), the Seaside Company's (Santa Cruz Boardwalk's) bandstand, special and temporary events, flood and drainage discharge operations, and beach area signage. Under the current proposal, the City intends 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 now proposed BMP strikes a reasonable balance between various competing uses at these extremely popular beaches, and it is appropriate to provide the City flexibility in these ways. Accordingly, these revised elements of the BMP are consistent with the Coastal Act's public recreational access policies.

However, the City is also proposing to extend the previously authorized (i.e., at Cowell Beach through 2019) dry sand nighttime (i.e., in this case from midnight to one hour before sunrise) curfew to also include Main Beach. The City argues that such a restriction is actually less onerous than nearby State Park beach curfews, including those at neighboring Twin Lakes State Beach that prohibit all access from 10pm to 6am.<sup>15</sup> As indicated above, the Commission has generally raised concerns about the potential of beach curfews to adversely impact nighttime public recreational access (and did so in its previous approval of the Cowell Beach curfew). The question is really one of whether there are demonstrable problems that require such action, and whether the scope of the closure is limited and tailored to address the identified problems in a way that does not significantly impact bona fide nighttime public access activities (e.g., stargazing, beach walks, water recreation, etc.).

These beaches are significant public recreational access areas that are 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

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<sup>15</sup> Commission staff has been unable to locate any CDP authorizations for such nearby State Park beach curfews, and is in a continuing conversation with State Parks staff regarding this issue.

requirement with the need to be cognizant of public safety needs and to protect natural resource areas from overuse. Similarly, and although Section 30211 does not allow for interference with public beach access rights, Section 30214 requires the Coastal Act's public access provisions to be implemented 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. One such consideration included in Section 30214(a)(2) requires consideration of the capacity of the site to sustain use and at what level of intensity.

In this case, the City has provided evidence that there is a continuing nighttime public safety problem on the beaches (including illegal drug use, late night loitering, littering, public defecation/urination, etc.) associated with certain nighttime activities on both Cowell and Main Beaches, and these problems lead to coastal resource impacts (including beach and ocean area degradation affecting use of the beaches during the daytime). According to the City's "Nighttime Beach Restrictions Summary Report for Main and Cowell Beaches" (see **Exhibit 4**), the types of nighttime-related impacts in the beach area are ongoing and the pattern is cyclical, and have spread to include Main Beach in addition to Cowell Beach. The City states that, without enforcement, word quickly spreads that the beach area can be used for illicit nighttime activities and these activities then grow in scope and scale, causing legitimate beachgoers and the City to be concerned about beach and ocean degradation, as well as public health and safety. For the City, this concern not only stems from beach users encountering unsightly and in some cases seriously dangerous hazards (such as used hypodermic needles, feces, and trash) during daytime hours, but also is related to the safety of beach users at nighttime when such illicit activities may be taking place.

The City believes that the nighttime curfew restrictions imposed at Cowell Beach reduced such public safety problems significantly, and translated to an overall healthier and safer sandy public beach and ocean environment for all users at all times as a result.<sup>16</sup> The City further reports that it has no evidence that the nighttime restriction has significantly adversely impacted bona fide nighttime public beach access during its imposition, and the Commission is likewise unaware of any significant impacts.<sup>17</sup>

There are two key components of the proposed nighttime sandy beach restrictions that relate to effects on public recreational access. First, the dry sand beach closure only applies from midnight to one hour before sunrise, during which time there are very few public access users to begin with, and those public access users that are present are still allowed 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) even with the curfew. Thus, the beach use limitations during this time are not

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<sup>16</sup> The City reports similar results at Main Beach in the time since nighttime restrictions were imposed there in late 2019 to abate a City-declared public nuisance (and thus not initially requiring a CDP authorization at that time, but for which a CDP is being requested here to continue same).

<sup>17</sup> That said, concerns have been identified locally that the curfew may disproportionately impact unsheltered individuals, and those issues are identified and discussed in the Environmental Justice Section of this report (see **Section E** below).

expected to lead to significant public recreational access impacts because there is very little such access to begin with at this time of night, and the curfew accommodates the most common types of night access. Second, the City reports that the sandy beach nighttime closure has led to a reduction in beach degradation (from litter, needles, urine/feces, etc.) associated with nighttime use, and thus has also led to a cleaner and safer beach and ocean environment for all users during the daytime when the vast majority of beach use in Santa Cruz occurs. Thus, the nighttime closure's limited public access impacts are minimized to almost none, and are also offset by increased cleanliness and safety of the general beach environs, enhancing public recreational access more generally. Again, as indicated above, these are the most popular and well-used beaches in all of Santa Cruz County, and are a significant visitor destination not only for City and County residents but for visitors from the greater San Francisco Bay area and beyond, magnifying the benefits of this policy.

In 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 revised BMP (**Exhibit 3**), which would be in effect for five years from the date of Commission approval (see **Special Conditions 1 and 2**), ensures protection of public recreational access opportunities as required by Chapter 3 of the Coastal Act by managing access, including promoting public safety, and minimizing public recreational access impacts (and providing for enhancement) while allowing for a multitude of uses for those visiting Main and Cowell Beaches. Therefore, as conditioned for a five-year duration, the BMP is consistent with the above-cited public recreational access 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.

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.<sup>18</sup> 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 opined that excessive kelp on the beach in that location was causing bacterial counts to exceed state safe water quality standards (which was later determined not to be the case). 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 11am) 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

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<sup>18</sup> Beach grooming includes debris removal that involves leveling, contouring, smoothing, sifting, and similar sand manipulation using machinery.

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. In addition, 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 other cases statewide),<sup>19</sup> because there are no special status species known to inhabit Main and Cowell Beaches,<sup>20</sup> and the ecological impacts have not been deemed significant enough to dictate otherwise.

For decades Cowell and Main Beaches have been subject to regular beach grooming activities, with ongoing sand sifting and occasional kelp removal, including incidental removal during other maintenance operations. 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 extremely 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.

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 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. Environmental Justice**

Coastal Act Sections 30107.3 and 30604(h) allow for the Commission to consider environmental justice when making CDP decisions. Specifically:

**30107.3.** "Environmental justice" means the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

(b) "Environmental justice" includes, but is not limited to, all of the following:

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<sup>19</sup> More than 100 miles of sandy shoreline between Santa Barbara and San Diego are regularly and intensively groomed under CDP authorization.

<sup>20</sup> 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).

- (1) The availability of a healthy environment for all people.
- (2) The deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities.
- (3) Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision making process.
- (4) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.

**30604(h).** When acting on a coastal development permit, the issuing agency, or the Commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.

To implement its Coastal Act environmental justice authority, the Commission adopted an Environmental Justice Policy (“EJ Policy”) to guide and inform its decisions and procedures in a manner that is consistent with the provisions in, and furthers the goals of, Chapter 3 of the Coastal Act and certified LCPs. The EJ Policy further articulates environmental justice concepts, including stating:

The term “environmental justice” is currently understood to include both substantive and procedural rights, meaning that in addition to the equitable distribution of environmental benefits, underserved communities also deserve equitable access to the process where significant environmental and land use decisions are made.

Thus, the Commission’s EJ Policy underscores the importance of both substance (i.e., evaluating whether projects do or do not disproportionately distribute environmental benefits and burdens) and process (i.e., ensuring that those potentially affected by proposed development have an equitable opportunity to participate in a transparent public process).

To date, the key area of controversy associated with the proposed BMP has been the proposed nighttime curfew on Cowell and Main Beaches. This controversy is not because of public recreational access as discussed earlier in this report, but because of the impacts the nighttime beach use restrictions could have on unsheltered individuals who have looked to these beaches for a place to sleep. The primary substantive concern identified is that while the nighttime curfew applies equally to all individuals who might attempt to visit the beach at night, it may disproportionately impact unsheltered

individuals who may sleep on these beaches overnight.<sup>21</sup> This could represent a potential environmental justice issue that the Commission must take into consideration, including to ensure that this unsheltered community has access to the Commission's process to make their views known and to help shape the debate on a potential Commission decision, and ultimately to ensure that such a decision equitably addresses and distributes coastal resource impacts and enhancements for all, including the unsheltered community.

Specifically, some members of the Santa Cruz community who oppose the Cowell and Main Beach curfew contend that it raises environmental justice concerns on both procedural and substantive grounds due to the impacts on the unsheltered (see, for example, correspondence in **Exhibit 5**). The key procedural concerns raised have been that the unsheltered population has not been provided sufficient notice of the proposed nighttime beach curfews. Substantive concerns raised include that the project would disproportionately affect the unsheltered population and essentially make sleeping on the beach illegal for that community.

### **Identifying Disproportionately Affected Communities**

The first step in this environmental justice analysis is to determine whether the unsheltered population constitutes an "environmental justice" community to which the Coastal Act's environmental justice provisions and the Commission's EJ Policy apply. If so, the next step is to identify to what extent implementing the proposed BMP may adversely and disproportionately affect that community. In answering these questions, the Commission's consideration necessarily focuses on how the proposal's coastal resource impacts may disproportionately affect the unsheltered compared to other populations affected by the proposed BMP.<sup>22</sup> The Commission is also tasked with ensuring that communities of concern can access the process to make their views known and to help shape the debate on potential Commission decisions.

Based on the evaluation criteria set forth above, the Commission finds that the unsheltered population is in fact an environmental justice community. The Coastal Act's definition of environmental justice as set forth in Section 30107.3 above commits the Commission to the fair treatment and meaningful involvement of people of all "races, cultures, and incomes ... with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." Unsheltered individuals can generally be classified as a very low-income segment of the population that are acutely struggling to attain some of society's most basic needs, such as safe housing, making them particularly vulnerable to outside environmental hazards. In addition, people of color tend to make up a much higher percentage of the unsheltered

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<sup>21</sup> The primary letter in opposition to the proposed curfew also cites to the *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) which held that homeless persons cannot be punished for sleeping outside on public property in the absence of adequate alternatives.

<sup>22</sup> As a coastal management agency charged with the protection and enhancement of the State's coastal resources, the Commission's review of environmental justice issues is rooted in its evaluation of coastal resource benefits and burdens, as opposed to broader-based issues affecting society's general welfare, which is the purview of other government agencies and entities.

population, particularly African Americans, who statewide make up nearly 40 percent of the unsheltered population but represent only 6.5 percent of the general population.<sup>23</sup> And finally, Commission staff consulted a number of environmental justice experts in California who uniformly advised that, based on the characteristics of this vulnerable population, the unsheltered definitely qualify as an environmental justice community. Thus, the Commission here finds that the unsheltered community qualifies as an environmental justice community to which the Coastal Act's environmental justice provisions and the Commission's EJ Policy apply.

### **Analysis of Potential Procedural Environmental Justice Concerns**

The Commission was originally scheduled to hear this item at its November 2019 meeting. However, Commission staff postponed that hearing to allow for additional outreach to unsheltered advocacy groups in Santa Cruz. Since then, the City has expanded its public outreach on the BMP, including providing more detailed public notices and holding two additional public hearings. The City clarified its pending CDP application notices to clearly reference the curfew issue being proposed through the BMP, and re-posted these notices around Cowell and Main Beach to help ensure maximum public awareness of the issues. In addition, on January 6, 2020, the City's Parks and Recreation Commission heard testimony and deliberated further on the BMP and curfew issues, unanimously recommending that the City Council endorse the proposed BMP. The City also reached out by email alerting all known interested parties, including local and broader unsheltered advocacy groups and stakeholders, that the City Council would deliberate on these curfew issues on January 28, 2020 and that the Coastal Commission was expected to consider and take an action at its March meeting. At the City Council's January 28, 2020 hearing on the matter, about six people spoke to the issues, and the Council approved the item, five Council members in favor, one opposed, and one absent.

At the additional City hearings, unsheltered advocates and new stakeholders were able to voice their concerns to the City. In addition, Commission staff also reached out, holding an open house for unsheltered advocacy groups and had a far ranging discussion. This helped both parties to better understand Commission's role and mandates, the needs of unsheltered individuals, and where these objectives may or may not overlap. For example, the Commission's mandate is rooted in coastal resource protection under the Coastal Act and LCPs. In this case, as staff articulated to these groups, coastal resource protection supports the limited nighttime closure that the City proposes as part of the BMP because it helps to decrease litter and increases the safety of the general beach environs, which enhances public recreational access. While those attending the open house generally expressed support for the curfew, including that they recognized that the City's beaches were not appropriate places to establish shelter, they did not agree with some of the City's reasoning for allowing it. For example, they argued that there were other alternatives to address identified issues, such as keeping public bathrooms open at night to address sanitation/water quality, and expressed frustration over the perception that the unsheltered community was solely to blame for

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<sup>23</sup> As detailed by the U.S. Department of Housing and Urban Development in its 2019 Annual Homeless Assessment Report to Congress.



the problems identified by the City. Some also expressed frustration that the general public would have to bear the burden of the closure when nighttime beach problems were caused by a relatively small group of people. In addition to this open house, the Commission expanded noticing on this matter and scheduled the hearing for March in Scotts Valley, a location closer to Santa Cruz, to help maximize the ability of all parties to participate in the process.

In short, every effort has been made to be inclusive and to maximize the public's ability to participate in the deliberative process for the BMP. This includes increased clarity in noticing the curfew issue, posting revised notices in the affected beach areas, increasing noticing to additional individuals and unsheltered advocates, and adding two additional local public hearings on the issue (including one at the City Council level). Commission staff also expanded outreach and discussions with unsheltered advocates to better understand their perspectives and better articulate the Coastal Commission's coastal management role, and where there is and is not overlap with health, safety, and welfare objectives. The Commission finds that appropriate and widespread efforts have been made, including in the time since the November 2019 Commission hearing for this item was postponed, to maximize the ability of the unsheltered community to participate in deliberations regarding BMP issues, and that the process does not raise an environmental justice procedural concern.

### **Analysis of Potential Substantive Environmental Justice Concerns**

The next question is whether implementation of the BMP would have disproportionate adverse coastal resource impacts for the identified environmental justice community. The nature of the proposed curfew impacts public recreational access as a coastal resource by prohibiting use of the dry sandy portion of a beach during specified hours, subject to the ability to cross the dry sandy beach to walk along the wet sandy beach and to access the ocean at night. As discussed previously in the "Public Recreational Access" section of this report, while the Coastal Act requires that public recreational access opportunities be maximized, it also allows for limitations on such opportunities for a variety of reasons. This includes providing for public safety, protecting against overuse and coastal resource degradation, limiting intensity of use, and providing management measures to protect against impacts from litter, among other things. In fact, both Sections 30210 and 30214 allow for the regulation of the time, place, and manner in implementing Coastal Act public recreational access policies. If the City has a reasonable basis for limiting public recreational access during certain hours, such as on the basis of public health, safety, and welfare, this can be found consistent with the Coastal Act. In this case, as described in the prior public recreational access findings above, the nighttime closure's limited public recreational access impacts are minimized, and are also offset by increased health and safety of the general beach environs, which enhances public recreational access more generally. As such, the proposed restrictions are appropriate under the Coastal Act.

The primary substantive concern raised by opponents is that while the curfew applies equally to all individuals visiting the beach at night, it will disproportionately impact the unsheltered community who sometimes sleep on the dry sand at night. While the curfew would effectively limit the ability of all people from sheltering and sleeping overnight on

the beach, such an impact does not raise coastal resource problems, particularly with respect to the type of public recreational access described by the Coastal Act in Section 30210. The Coastal Act's public recreational access provisions seek to maximize public recreational access but also to protect coastal resources, including sandy beaches and the ocean, from potential adverse impacts that can result from uncontrolled access. Here, the City's proposal strikes that balance. It limits potential impacts to public recreational access by allowing public access to the wet sand and the ocean via the dry sand 24 hours a day. The BMP also protects beach and ocean area resources by reducing the dangers attributable to nighttime activities, including used hypodermic needles, feces/urine, and trash.

The use of a public space for shelter because of a person's lack of financial means to afford housing is a terrible and tragic circumstance, and an issue of concern to coastal communities and all who enjoy the State's coastal zone and its beaches. Although legitimate hardships may compel certain people to set up camp on beaches, those situations are a function of the homelessness crisis plaguing much of the nation at the present time, not of impeded public recreational access. The Coastal Act's requirement to promote public recreational access to and along the coast was not intended to allow those areas to be used as shelter and, in fact, the Act expressly establishes public recreational access uses as having priority over residential ones. It also expressly provides for limitations on uses of all types to avoid undue coastal resource degradation. Therefore, the Commission is not required to allow the public to live on the beach in order to be provided with ample access to it, especially when doing so could have a negative impact on both the resource and public recreational access by other members of the public. Thus, the Commission believes that an action here to allow the fairly limited nighttime dry sand restrictions is appropriate under the Coastal Act, and does not unduly nor inappropriately burden one group more than another. Here, the City's proposed restrictions are a reasonable response to the problems presented, and should enhance public access and coastal resources more broadly.

At the same time, the Commission is sensitive to the challenges faced by the unsheltered and is supportive of means within the Commission's mandates to help ease their burdens, but the ability to address the root causes of the homelessness crisis are outside the purview of the Commission and its Coastal Act coastal resource protection mandate. In fact, much of the crises facing this community relate to broader social services and socioeconomic conditions that are better addressed by local governments and other applicable agencies under their power to regulate for public health, safety, and welfare. The Commission strongly supports local governments and other agency partners in finding solutions to the ongoing homelessness epidemic. In this instance, the potential disproportionate impacts the unsheltered may experience from the beach curfew should also be helped by the City's efforts to address the crisis in Santa Cruz. For example, the City has been taking steps to help better address its homelessness problems by, among other things, working with regional partners to increase emergency shelter capacity, recruiting a Homeless Response Manager to coordinate internal and external efforts related to homelessness, and helping to relocate the Homeless Garden Project, all in just this year. (See **Exhibit 6** for a detailed inventory of recent past and current action by the City to address these issues.) The curfew seeks to enhance public

recreational access for all individuals, and the resulting disproportionate impacts from the lack of affordable housing or adequate social services are being mitigated by the City. The ability of the Commission to offset unintended consequences from non-coastal resource issues can only be addressed with solutions beyond this agency's authority.

### **Conclusion**

The Commission recognizes that a core component of its EJ Policy, and of the Coastal Act more broadly, is to maximize public recreational access to and along the beach. These issues are central in guiding the Commission's implementation of the Coastal Act, including ensuring that CDP decisions benefit all and do not unduly burden a select group. Claims that access is being hampered are not taken lightly and are given careful consideration. Based on a range of considerations, along with actions taken to maximize participation and outreach, the Commission finds that the project's procedural and substantive aspects are not in conflict with the Coastal Act's environmental justice objectives. Approval of this proposed project, as conditioned, both substantively and procedurally, aligns with the goals of the Commission's EJ Policy and the Coastal Commission's environmental justice authority. The fairly limited nighttime dry sand restrictions do not unduly or inappropriately burden one group more than another with respect to public recreational access, and should lead to public recreational access enhancements overall to an important visitor destination, improving it for all users.

### **F. 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 coastal 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 tens of 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 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**).

Furthermore, Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP

applications.<sup>24</sup> Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on this 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 CDP, the interpretation and/or enforcement of CDP terms and conditions, or any other matter related to this CDP (see **Special Condition 4**).

### **G. California Environmental Quality Act (CEQA)**

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

The City of Santa Cruz, acting as CEQA 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 the Natural Resources Agency as being the functional equivalent of environmental review under CEQA. The preceding CDP findings discuss the relevant coastal resource issues with the proposal, and the CDP terms and 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)

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<sup>24</sup> See also California Code of Regulations Title 14 Section 13055(g).

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS<sup>25</sup>**

- California Coastal Commission CDP files 3-90-031, 3-95-043, and 3-11-027, all as amended
- City of Santa Cruz 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 adopting 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 (dated February 28, 2014)
- City of Santa Cruz LCP Amendment No. 1-95 (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
- Edgar Landeros, Nueva Vista Community Resources
- Robert Norse, Homeless United for Friendship and Freedom
- Serge Kagno, unsheltered advocate
- Rafa Sonnenfeld, unsheltered advocate

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<sup>25</sup> These documents are available for review in the Commission’s Central Coast District office in Santa Cruz.