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F18b

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STAFF REPORT SUBSTANTIAL ISSUE & DE NOVO HEARING

Appeal Number: A-2-PAC-20-0073

Applicant: San Pedro Valley LLC

Appellant: Cherie Chan

Local Government: City of Pacifica

Local Decision: City of Pacifica Coastal Development Permit Application Number CDP-409-19, approved by the City of Pacifica City Council on November 9, 2020

Project Location: Property at the intersection of Danmann Avenue and Kent Road (1300 Danmann Avenue, APNs 023-013-010 and 023-013-020) in the Pedro Point area of the City of Pacifica, San Mateo County

Project Description: Construction of a two-story mixed-use building on a 14,551-square foot parcel with 2,292 square feet of commercial space on the ground floor and four residential units on the second floor

Staff Recommendation: Substantial Issue Exists; Approval with Conditions

IMPORTANT HEARING PROCEDURE NOTE

Please note that at the hearing for this item the Commission will not take testimony on the “substantial issue” portion of this recommendation unless at least three commissioners request it. Commissioners may ask questions of the Applicant, aggrieved persons (i.e., generally persons who participated in some way in the local permitting process), the Attorney General, the Executive Director, and their proxies/representatives prior to determining whether or not to take testimony regarding

whether the appeal raises a substantial issue. If the Commission does elect to take such testimony, then it is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits). Only the Applicant, the Appellant, persons who opposed the application before the local government (or their representatives), the local government, and their proxies/representatives are allowed to testify during this substantial issue phase of the hearing. Other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will immediately follow, unless it has been postponed, at which time all persons are invited to testify. (California Code of Regulations, Title 14, Sections 13115 and 13117.)

SUMMARY OF STAFF RECOMMENDATION

The City of Pacifica approved a coastal development permit (CDP) for the construction of a two-story mixed-use building, including 2,292-square feet of commercial space on the ground floor, a commercial patio area located behind the northernmost commercial space on the seaward side of the site, and four residential units on the second story (two one-bedroom and two two-bedroom apartments) at the property at 1300 Danmann Avenue in the Pedro Point area of the City of Pacifica. The Appellant contends that the City-approved project raises City of Pacifica Local Coastal Program (LCP) conformance issues with respect to coastal hazards, hydrology, coastal recreation, public access, agricultural production, and neighborhood character. Specifically, the Appellant contends the approved development is inconsistent with the certified LCP because it: (1) does not minimize risks to life and property nor assure stability and structural integrity for the life of the project; (2) does not consider the hydrology of the site; (3) does not protect coastal recreational uses or provide public access to the shoreline; (4) does not preserve agricultural production on the property; and (5) is inconsistent with the existing neighborhood character. In addition to these main issues on LCP consistency, the Appellant contends that the City's 1980 General Plan is legally inadequate, out of date, and inconsistent, and that until it is updated to comply with legal requirements, the City did not have the authority to approve the project.

Staff agrees the City-approved project raises a substantial issue with regards to coastal hazards. In terms of hazards, the LCP requires that new development minimize risks to life and property in areas of high coastal hazards, that it be set back adequately to accommodate a 100-year storm event and to ensure stability for the design life, as defined by the LCP generally to be a 100-year period,¹ and prohibits development that would require armoring to ensure safety and stability during its lifetime. In this case, the City approved the proposed development with limited analysis of historic erosion rates and expected future trends, and thus it is not clear if the project is adequately sited and designed to address coastal hazard risks as directed by the LCP. Further, the City did not require conditions to address future hazards response (e.g., no future armoring) to ensure LCP consistency on these points.

¹ Where the policy requires such stability for the expected life of the structure, which the LCP states is the time frame in which the designer expects the development to safely exist, generally 100 years.

As to other appeal contentions, staff does not believe that these contentions raise substantial LCP conformance issues, including because the project is not expected to significantly affect public recreational access and should not be inconsistent with the surrounding community character, which is eclectic. As to agricultural contentions, there does not appear to be evidence to suggest that the site is prime agricultural land, and it is not in agricultural production in any case, and thus no clear agricultural issues are present. As to parking, the City-approved project actually exceeds required off-street parking requirements by nearly 20%, and it is not likely to lead to parking issues in the area. Finally, the grounds for appeal do not extend to the City's General Plan, and these contentions are inapplicable here.

Accordingly, staff recommends that the Commission find that a **substantial issue** exists with respect to the City-approved project's conformity with the LCP and that the Commission take jurisdiction over the CDP application for the proposed project.

In reviewing that CDP application, staff (including the Commission's staff geologist) has identified appropriate setback and coastal hazard related requirements for the site, which continue to allow for a similarly sited and designed mixed use project. As conditioned, the project can be found consistent with the applicable policies of the certified LCP and the Coastal Act's access and recreation policies, and staff recommends that the Commission approve a conditioned CDP for the proposed development. The motions and resolutions for the recommended substantial issue determination and CDP action are found below on page 5.

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Exhibits

- Exhibit 1 – Location Map
- Exhibit 2 – Site Photos
- Exhibit 3 – City’s Notice of Final CDP Action
- Exhibit 4 – Appellants’ Contentions
- Exhibit 5 – Coastal Commission Comments to City
- Exhibit 6 – Final Project Plans

1. MOTIONS AND RESOLUTIONS

A. Substantial Issue Determination

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in a de novo hearing on the CDP application and adoption of the following resolution and findings. 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 affirmative vote of a majority of the Commissioners present.

Motion to find substantial issue: *I move that the Commission determine that Appeal Number A-2-PAC-20-0073 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a no vote.*

Resolution to find substantial issue: *The Commission hereby finds that Appeal Number A-2-PAC-20-0073 presents 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 Program and/or the public access and recreation policies of the Coastal Act.*

B. CDP Determination

Staff recommends that the Commission, after public hearing, **approve** a CDP with conditions 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 to approve CDP: *I move that the Commission approve Coastal Development Permit Number A-2-PAC-20-0073 pursuant to the staff recommendation, and I recommend a yes vote.*

Resolution to approve CDP: *The Commission hereby approves Coastal Development Permit Number A-2-PAC-20-0073 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the City of Pacifica certified Local Coastal Program and with the public access policies 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.*

2. 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 Applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 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 Applicant to bind all future owners and possessors of the subject property to the terms and conditions.

3. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Approved Project.** This CDP authorizes construction of a two-story mixed-use building, including 2,292 square feet of commercial space on the ground floor, 19 parking spaces, a commercial patio area located behind the northernmost commercial space on the seaward side of the site, and four residential units on the second story (2 one-bedroom and 2 two-bedroom apartments), with the development setback 17 feet from the northern property line at the western-most side of the development and 23 feet from the northern property line at the eastern-most side of the development on the 1300 Danmann Avenue site as shown on the plans prepared by Brian Brinkman Drafting & Design Inc., dated 9/3/21 and dated received in the Coastal Commission's North Central District Office on 9/3/21 (see **Exhibit 6**, "Final Project Plans"). The Permittee shall undertake development in substantial conformance with the Approved Project. Minor adjustments may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary by the Executive Director; and (2) do not adversely impact coastal resources.
- 2. Construction Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and written approval. The Construction Plan shall, at a minimum, include and provide for the following:

- a. Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on coastal resources, including by using inland areas for staging and storing construction equipment and materials as feasible. Construction, including but not limited to construction activities and materials and equipment storage, is prohibited outside of the defined construction, staging, and storage areas.
- b. Construction Methods.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separate from public recreational use areas as much as possible (including using unobtrusive temporary fencing or equivalent measures to delineate construction areas), and including verification that equipment operation and equipment and material storage will not, to the maximum extent feasible, significantly degrade public views during construction. The Plan shall limit construction activities to avoid coastal resource impacts as much as possible including lighting of work areas.
- c. Construction Timing.** Construction is prohibited during weekends; from the Saturday of Memorial Day through Labor Day inclusive; and during non-daytime hours (i.e., from one-hour after sunset to one-hour before sunrise), unless due to extenuating circumstances the Executive Director authorizes such work.
- d. Construction BMPs.** The Construction Plan shall identify the type and location of all erosion control/water quality best management practices (BMPs) that will be implemented during construction to protect coastal water quality, including at a minimum all of the following:

 - 1. Runoff Protection.** Silt fences, straw wattles, or equivalent apparatus shall be installed at the perimeter of the construction areas to prevent construction-related runoff and sediment from discharging from the construction areas, or entering into storm drains or otherwise offsite or towards the beach and ocean. Special attention shall be given to appropriate filtering and treating of all runoff, and all drainage points, including storm drains, shall be equipped with appropriate construction-related containment, filtration, and treatment equipment.
 - 2. Equipment BMPs.** Equipment washing, refueling, and servicing shall take place at an appropriate off-site and inland location to help prevent leaks and spills of hazardous materials at the project site, at least 50 feet inland from the bluff edge and preferably on an existing hard surface area (e.g., a road) or an area where collection of materials is facilitated. All construction equipment shall also be inspected and maintained at a similarly sited inland location to prevent leaks and spills of hazardous materials at the project site.

- 3. Good Housekeeping BMPs.** The construction site shall maintain good construction housekeeping controls and procedures at all times (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the site; etc.).
- 4. Erosion and Sediment Controls.** All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each workday.
- e. Construction Site Documents.** The Construction Plan shall provide that copies of the signed CDP and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, as well as the public review requirements applicable to them, prior to commencement of construction.
- f. Construction Coordinator.** The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that the construction coordinator's contact information (i.e., address, phone numbers, email, etc.), including, at a minimum, an email address and a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas while still protecting public views as much as possible, along with indication that the construction coordinator should be contacted in the case of a regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name and contact information (i.e., address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry. All complaints and all actions taken in response shall be summarized and provided to the Executive Director on at least a weekly basis.
- g. Restoration.** All public recreational use areas and all public access points impacted by construction activities shall be restored to their pre-construction condition or better within 72 hours of completion of construction.
- h. Construction Specifications.** The construction specifications and materials shall include appropriate control provisions that require remediation for any work done inconsistent with the terms and conditions of this CDP.

- i. **Notification.** The Permittee shall notify planning staff of the Coastal Commission's North Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Construction Plan. Minor adjustments to the above construction requirements as well as to the Executive Director-approved Plan, which do not require a CDP amendment or new CDP (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

3. **Tsunami Preparedness Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a plan for mitigating the hazards associated with tsunami to the Executive Director for the review and written approval. The Tsunami Preparedness Plan shall demonstrate that: (a) the existence of a threat of a tsunami from both distant and local sources shall be adequately communicated to residents of the property; (b) information shall be provided to owners of the units regarding such threats (and samples of same provided); and (c) signs that do not significantly impact public views shall be installed identifying tsunami escape routes. All requirements above and all requirements of the approved Tsunami Preparedness Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Tsunami Preparedness Plan. Minor adjustments to the above requirements as well as to the Executive Director-approved Plan, which do not require a CDP amendment or new CDP (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

4. **Coastal Hazards.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:

- a. **Coastal Hazards.** This site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunami, tidal scour, wave overtopping, coastal flooding, and their interaction, all of which may be exacerbated by sea level rise.
- b. **Permit Intent.** The intent of this CDP is to allow for the approved project to be constructed and used consistent with the terms and conditions of this CDP for only as long as the development remains safe for occupancy, use, and access, without additional substantive measures beyond ordinary repair or maintenance to protect the development from coastal hazards.
- c. **No Shoreline Protective Devices.** No shoreline protective devices, including but not limited to piers or retaining walls, shall be constructed to protect the

development approved pursuant to this CDP, including, but not limited to, residential buildings or other development associated with this CDP, in the event that the approved development is threatened with damage or destruction from coastal hazards in the future. By acceptance of this CDP, the Permittee waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law.

- d. Future Removal/Relocation.** The Permittee shall remove or relocate, in part or in whole, the development authorized by this CDP, including, but not limited to, the residential buildings and other development authorized under this CDP, and restore the site to natural conditions, if any of the following occur:
- 1. Safety.** The City of Pacifica or any government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from coastal hazards, and that there are no feasible measures that could make the structures suitable for habitation or use without the use of a shoreline protective device.
 - 2. Services.** Essential services to the site (e.g., utilities, roads, etc.) can no longer feasibly be maintained and provided due to coastal hazards. The City of Pacifica shall not be required to maintain access and/or utility infrastructure to serve the approved development in such circumstances.
 - 3. Adaptation.** Removal is required pursuant to LCP policies for sea level rise adaptation planning.
 - 4. Armoring.** The development requires new and/or augmented shoreline protective devices to maintain safety and stability.
 - 5. Public Trust.** The development encroaches onto public trust lands and (a) is not approved by the California Coastal Commission consistent with the Coastal Act; and (b) is not authorized by the California State Land Commission.

Development associated with removal or relocation of the residential buildings or other development authorized by this CDP and restoration to natural conditions shall require Executive Director approval of a plan to accommodate same prior to any such activities. In the event that portions of the approved development fall onto bluff faces, the beach, or the ocean before they are removed or relocated, the Permittee shall remove all recoverable debris associated with the development from such areas, and lawfully dispose of the material in an approved disposal site, all subject to Executive Director approval.

- e. Assume Risks.** The Permittee assumes the risks to the Permittee and the properties that are the subject of this CDP of injury and damage from such coastal hazards in connection with this permitted development; unconditionally

waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; indemnifies and holds 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 accepts full responsibility for any adverse effects to property caused by the permitted project.

- 5. Real Estate Disclosure.** Disclosure documents related to any future marketing, leasing, and/or sale of approved development, including but not limited to marketing materials, sales contracts and similar documents, shall notify potential buyers of the terms and conditions of this CDP, including explicitly the coastal hazard requirements of **Special Condition 4**. A copy of this CDP shall be provided in all real estate disclosures.
- 6. Future Permitting.** Pursuant to Title 14 California Code of Regulations (CCR) Section 13250(b)(6) and 13253(b)(6), the exemptions otherwise provided in Coastal Act Section 30610(a) and 30610(b) shall not apply to the development governed by this CDP. Accordingly, any future improvements to the development authorized by this CDP shall require an amendment or additional CDP authorization from the Commission. In addition, any future repair or maintenance associated with the development governed by this CDP that is identified as requiring a CDP in Coastal Act Section 30610(d) and Title 14 CCR Sections 13252(a)-(b) shall require an amendment or additional CDP authorization from the Commission.
- 7. Liability for Costs and Attorneys' Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and/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/or 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.
- 8. Deed Restriction.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcels governed by this CDP a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this CDP, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; (2) imposing the terms and

conditions of this CDP as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of all of the parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.

4. FINDINGS AND DECLARATIONS

A. Project Location

The proposed project is located at 1300 Danmann Boulevard, south of Shelter Cove Road and Pacifica State Beach in the Pedro Point area of the City of Pacifica in San Mateo County. The mostly undeveloped site is comprised of two parcels totaling 14,551 square feet, located on the northern corner of the intersection of Kent Road and Danmann Avenue (see **Exhibit 1**). Two somewhat dilapidated and currently unused barn structures are located on the property and are proposed to be demolished. The site is zoned Neighborhood Commercial/Coastal Zone Combining District (C-1/C-Z), which allows for visitor-serving commercial uses including, but not limited to, motels, hotels, restaurants, delicatessens, crafts and art galleries, retail uses of interest to visitors, recreational and sporting equipment sales and rentals, campgrounds, and bait and tackle shops. Other uses allowed in the C-1/C-Z combined zoning district include one or more dwelling units in the same building as a commercial use, when such uses are located entirely above the ground floor.

Existing development in the area consists of single-family residential structures to the west and south and commercial structures and public facilities to the east along Danmann Avenue, including the Pedro Point Fire House, the Coastal Cat Clinic and Pedro Point Community Center. The project site is in the Pedro Point-Shelter Cove area of the City, the southernmost coastal neighborhood in Pacifica, immediately to the south of Pacifica State Beach. The neighborhood includes primarily residential uses with some retail commercial uses on San Pedro Avenue. Pedro Point-Shelter Cove is described in the LCP as low- to high-income residential and commercial, with limited access to the shoreline and geotechnical constraints. The site slopes uphill towards the west and contains primarily non-native annual grasses and forbs. There is also an abandoned railroad berm to the east of the property.

See site location map in **Exhibit 1**, and site area photos in **Exhibit 2**.

B. Project Description

The proposed project is a two-story mixed-use building, including 2,292 square feet of commercial space on the ground floor, a commercial patio area located behind the northernmost commercial space on the seaward side of the site, and four residential units on the second story (2 one-bedroom and 2 two-bedroom apartments). The commercial space is designed to easily transition between either a single tenant or two separate tenants, and the storefronts would face Danmann Avenue. While the

commercial uses have not yet been determined, the project includes a deed restriction prohibiting restaurants and fitness studios due to parking concerns.

Due to the sloping nature of the site, the structure is designed to be built into the slope. Parking would be accessed from Kent Avenue, behind the building at-grade and thus higher in elevation than Danmann Avenue, and elevated from grade as the site slopes down toward Danmann. The project would include nineteen off-street parking spaces, in addition to five bicycle parking spaces. The proposed project would be located approximately 132 feet from the blufftop edge at the west side of the proposed development and 175 feet from the blufftop edge at the east side.

See **Exhibit 6** for the proposed project plans.

C. City of Pacifica Approval

As part of the City and the Coastal Commission's ongoing local development review coordination process, Coastal Commission staff sent comments to the City regarding the originally proposed project, expressing concerns regarding the need to appropriately address coastal hazard issues that affect this site, including a specific recommendation to incorporate hazards-related conditions of approval to account for future bluff erosion, such as no future shoreline armoring, removal of development if threatened by coastal hazards, requirement of hazards disclosure and assumption of risk, as the LCP requires appropriate setbacks without reliance on existing or proposed shoreline armoring. Commission staff also recommended increasing the setback from the northern end of the property closest to the bluff edge in the absence of the recommended conditions of approval (see comments in **Exhibit 5**). While the Applicant indicated that he was willing to accept such conditions of approval, the City chose not to place such conditions on the project. Ultimately, on May 4, 2020, the City Planning Commission approved City CDP-409-19 for the proposed development, with a blufftop setback from the property line of 115 feet, and a blufftop setback of 123 feet from the nearest part of the building. The Planning Commission's CDP approval was appealed to the City Council by an appellant different than the appellant currently before the Commission.

The Planning Commission's CDP approval was appealed to the City Council by a different appellant. Prior to City Council review, the Applicant submitted alternative project designs to address some of the Appellant's concerns, including a revised project that reduced the project scope from three to two-stories and from six residential units to four residential units. Additional project modifications at this stage included increasing the setback from the blufftop edge from 123 feet to 132 feet at the west side and 175 feet at the east side of the proposed development. On November 9, 2020, the City Council denied the appeal and approved the then proposed and modified project, approving construction of a two-story mixed-use building with four residential units, and an increased setback on the subject site. The City Council chose not to add the coastal hazard-related conditions that were recommended by Commission staff.

Notice of the City Council's final action on the City CDP was received in the Coastal Commission's North Central Coast District Office on November 20, 2020 (**Exhibit 3**). The Coastal Commission's ten-working day appeal period for this action began on

November 23, 2020 and concluded at 5 p.m. on December 8, 2020. One valid appeal was received during that time, from Cherie Chan (see **Exhibit 4**).

D. Appeal Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. 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. This project is appealable because it involves development that is located between the sea and the first public road paralleling the sea and is within 300 feet of the top of the seaward face of a coastal bluff.

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP and/or to Coastal Act public access provisions. For appeals of a CDP denial, where allowed (i.e., only allowed in extremely limited circumstances – see description of appealable actions, above), the grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions.

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal, addressing at least the substantial issue question, within 49-working days of the filing of the appeal unless the applicant has waived that requirement (and the Applicant here waived such requirement), in which case there is no deadline.

The Coastal Act and the Commission's implementing regulations are structured such that there is a presumption of a substantial issue when the Commission acts on this question, and the Commission generally considers a number of factors in making that determination.² At this stage, the Commission may only consider issues brought up by

² The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (California Code of Regulations, Title 14, Section 13115(b)). Section 13115(c) of the Commission regulations provides, along with past Commission practice, that the Commission may consider the following five factors when determining if a local action raises a significant issue: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and the Coastal Act's public access provisions; (2) the extent and

the appeal. At the substantial issue hearing, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no such hearing is requested, a substantial issue is automatically found. In both cases, when the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, aggrieved persons, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

If, following testimony and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the local government's CDP decision stands. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal.

In the second phase of the appeal, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances the Coastal Act's public access and recreation provisions). This step is often referred to as the "de novo" review phase of an appeal, and it entails reviewing the proposed project in total. There is no legal deadline for the Commission to act on the de novo phase of an appeal. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing (if applicable).

E. Summary of Appeal Contentions

The Appellant contends that the City-approved project raises LCP conformance issues with respect to coastal hazards, hydrology, coastal recreational uses, public access, agricultural production, and neighborhood character. Specifically, the Appellant contends the approved development is inconsistent with the policies of the certified LCP because it: (1) does not minimize risks to life and property nor assure stability and structural integrity for the life of the project; (2) does not consider the hydrology of the site; (3) does not protect coastal recreational uses or provide public access to the shoreline; (4) does not preserve agricultural production on the property; and (5) is inconsistent with the existing neighborhood character. In addition to these LCP consistency issues, the Appellant contends that the City's 1980 General Plan is legally inadequate, out of date, and inconsistent, and that until it is updated to comply with legal

scope of the development; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

requirements, the City did not have the authority to approve the project on the grounds that the General Plan is out of date.³ See **Exhibit 4** for the complete appeal document.

F. Standard of Review

The standard of review for considering these appeal contentions is the certified City of Pacifica LCP (which is made up of a certified Land Use Plan (LUP) and a certified Implementation Plan (IP)) and the public access policies of the Coastal Act (which include Coastal Act Sections 30210 through 30224).

G. Substantial Issue Determination

1. Coastal Hazards

Applicable LCP Provisions

The City of Pacifica LCP incorporates the relevant requirements of several Coastal Act sections relevant to hazards, including Section 30253 that requires new development to minimize risks to life and property in areas of high geologic hazard without a reliance on shoreline altering armoring (LUP Policy 26a). The LCP also discusses the Pedro Point – Shelter Cove neighborhood and indicates that geotechnical constraints in this area include steep slopes, eroding bluffs, weak bedrock formations, and occasional rock falls (LUP page C-57). Per the LCP development must be set back an adequate distance to accommodate 100-year storm events, whether caused by seismic, geotechnical, or storm conditions, and to ensure stability for the design life of the project, which the LCP defines generally to be a 100-year period,⁴ and prohibits development that would require armoring to ensure stability during its lifetime. If the required setback would render a site undevelopable, the LCP provides that the setback may be reduced by the minimum extent necessary to allow economically viable development, provided a qualified geologist determines that there would be no threat to public health and safety (LCP Implementation (IP) Section 9-4.4404 (b); and IP Section 9-4.4404(d)(5)).

In addition, the LCP specifies that only portions of a site that are usable throughout the design life of a project (again, generally assumed to be 100 years) and capable of withstanding a 100-year hazard event can be used for determining the amount of site area where proposed development can be located. Specifically, IP Section 9-4.4404(d)(3) provides that “The density of new development shall be based on the net developable area, as established in the required geotechnical survey.” And the LCP defines net developable area as: “The portion of a site determined by a geologist to remain usable throughout the design life of the project and determined to be adequate to withstand a 100-year hazard event.” The applicable LCP polices are as follows:

LUP Policy 26 (Coastal Act Section 30253). New development shall: (a) Minimize risks to life and property in areas of high geologic, flood and fire hazard.

³ The grounds for appeal do not extend to the City’s General Plan, and these contentions are inapplicable here and are not further evaluated.

⁴ Where the policy requires such stability for the expected life of the structure, which the LCP states is the time frame in which the designer expects the development to safely exist, generally 100 years.

(b) Assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

LUP Definition of Net Developable Area. *The portion of a site determined by a geologist to remain usable throughout the design life of the project and determined to be adequate to withstand a 100-year hazard event.*

LUP Page C-20. *The “net developable area” along the bluff top can be determined by detailed geotechnical studies which would indicate the stable portions of the site and establish “hazard” setbacks to protect the structures for their design life, generally assumed to be 100 years. The appropriate land use designation for a site will be applied only to the established net developable area. In the event the net developable area for parcels in existence on the date of the adoption of these amendments is determined to be less than the minimum area per unit allowed in the designation, one residential unit per parcel shall be permitted so long as the property conforms to all geotechnical standards and is determined to be developable pursuant to geotechnical review.*

LUP Definition of Design Life. *The time span during which the designer expects the development to safely exist, generally 100 years.*

IP Section 9-4.4404(a) Geotechnical Suitability. Intent. *The provisions of this Section shall apply to all new development requiring a coastal development permit in the CZ District and shall be subject to the regulations found in Article 43, Coastal Zone Combining District. The intent of these provisions is to minimize risks to life, property, and the natural environment by ensuring geotechnical suitability for all development.*

IP Section 9-4.4404(c)(6) Geotechnical Suitability. *All geotechnical surveys shall, at a minimum, include the following information: Mitigation measures demonstrating that potential risks could be reduced to acceptable levels.*

IP Section 9-4.4404(d)(5) Geotechnical Suitability. *Consistent with the City’s Seismic Safety and Safety Element, new development shall be set back from the coastal bluffs an adequate distance to accommodate a 100-year event, whether caused by seismic, geotechnical, or storm conditions, unless such a setback renders a site undevelopable. In such case, the setback may be reduced to the minimum extent necessary to permit economically viable development of the site, provided a qualified geologist determines that there would be no threat to public safety and health.*

Further, the LCP requires that new development be designed to avoid coastal resource impacts, including to prevent impacts from armoring on natural shoreline processes such as sand supply, and prohibits armoring to protect new development, including:

LUP Policy 16 (Coastal Act 30235). *Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

IP Section 9-4.4406(c) Development Standards. *The following standards apply to all new development along the shoreline and on coastal bluffs.*

(1) Shoreline Protection: Alteration of the shoreline, including diking, dredging, filling, and placement or erection of a shoreline protection device, shall not be permitted unless the device has been designed to eliminate or mitigate adverse impacts on local shoreline sand supply and it is necessary to protect existing development or to serve coastal-dependent uses or public beaches in danger from erosion or unless, without such measures, the property at issue will be rendered undevelopable for any economically viable use;

(2) Shoreline Protection: Consistent with the City's Seismic Safety and Safety Element, new development which requires seawalls as a mitigation measure or projects which would eventually require seawalls for the safety of the structures shall be prohibited, unless without such seawall the property will be rendered undevelopable for any economically viable use.

Analysis

The Applicant's consultant estimated that the bluffs seaward of the project site have eroded at rates ranging from 0.1 to 0.35 feet/year based on an analysis of aerial photographs spanning a 45-year period (i.e., from 1955 to 2000).⁵ In a later supplemental report, the Applicant's consultant updated its erosion analysis, identifying retreat rates of up to 0.625 feet/year between 2002 and 2018, and estimated that a major episodic erosion event could result in approximately 10 feet of retreat at the bluff toe, and 20 feet of retreat in the upper bluff at any one time.⁶ Ultimately the Applicant's consultant concluded that rising sea levels would have little effect on bluff erosion rates due to the hard rock present at the bluff toe, and that some 10 to 35 feet of bluff retreat would be expected over the next 100 years.

⁵ See Geotechnical Investigation for Proposed New Mixed-Use Building, by GeoForensics Inc., dated prepared November 1, 2019.

⁶ See Danmann Avenue Geotechnical Supplement, by GeoForensics Inc., dated prepared January 15, 2021. The report did not provide a revised estimate of long term estimated annual erosion that took into account the two periods of time evaluated (i.e., 1955 to 2000 and 2002 to 2018).

The City relied on this information to determine that the project would be consistent with the LCP and safe for a 100-year design life because expected erosion would not be expected to reach the proposed buildings using either the 0.1 to 0.35 feet/year erosion rate (up to 35 feet of erosion) or the 0.625 feet per year erosion rate (up to 62.5 feet of erosion) in the next 100 years, which similarly would not reach the proposed buildings (which would be located at least 132 feet from the blufftop edge). However, as indicated in Commission staff's comments submitted to the City, additional conditions are necessary due to the uncertainty associated with sea level rise and other coastal hazards. Though other reliable sources (e.g., USGS) report much higher historic erosion rates for this area than even the higher erosion rate used by the City based on the more recent time frame, ranging up to 6.6 feet/year, Commission geologist Dr. Joseph Street concluded the rates used by the city were acceptable after conducting his own analysis. However, it is unclear how such rates would not be exacerbated by rising seas, including as evidenced by hazards analyses associated with other nearby projects where sea level rise was shown to be an accelerating erosional factor (e.g., see CDP Application A-2-PAC-19-0160, denied by the Commission on 6/10/2020).

If these higher documented historic erosion rates were combined with standard sea level rise analyses, it is possible that net developable area would be smaller, and the currently approved setback of a minimum 132 feet would not be adequate. In addition, and irrespective, the City did not ensure that the development would not be protected by shoreline armoring during its lifetime as required by the LCP, including in the event that the estimates proved wrong. Due to this, additional conditions are required to adequately address the coastal hazards on site.

Further, with respect to hydrologic contentions, the Applicant's consultant did not encounter any groundwater or underground springs or seepage areas at the site. However, the Applicant's consultant did indicate that the project site is underlain at shallow depth by a hard and relatively impermeable bedrock, with only a thin layer of sandy soils and marine terrace deposits above it. During the wet season, the site likely develops a temporary water table "perched" atop the bedrock, which emerges at the surface along the edge of slopes or existing cuts. The 2021 report concludes that the proposed development would not result in "notable change in the performance of ground waters at or around the site." Commission geologist Dr. Joseph Street reviewed the reports and the geologic conditions of the project site and concluded that groundwater seepage at the site will continue to occur with or without the new development, but that it is possible that the cuts and grading associated with the proposed project could increase the amount or rate of seepage on the site itself, and thus the amount or rate of discharge to the street.

However, Dr. Street concluded that the City approved project does address this issue by including drainage and runoff management requirements in the approved project that address these hydrological concerns. Specifically, the development will use pervious concrete to assure that the site seepage post-development will percolate to the ground. Additionally, the City's approved grading and utility plan requires the project connect to the existing City storm drain, so that any surface drainage that is not dealt with onsite, would not pool, or flow to adjacent areas, assuring adverse impacts to surrounding

development are avoided. Therefore, the City approved project does take site hydrology into account by conditioning the project to assure that onsite drainage is managed, and this appeal contention does not raise a substantial LCP conformance issue with respect to hydrology.

2. Other Appeal Issues

Public Recreational Access

The Appellant contends the project would violate LUP policies related to protections for coastal recreational uses, and that the property in question is located at a critical intersection that could be enhanced as a visitor-serving coastal recreational destination, in particular for recreational fishing access. In addition, the Appellant contends that this project fails to provide public access from the nearest public roadway (Kent Road) to the shoreline, inconsistent with LCP requirements related to new development. Specifically, the Appellant contends the project does not comply with the following LUP policies:

***LUP Policy 7:** 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.*

***LUP Policy 8:** The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

***LUP Policy 9:** Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

The City of Pacifica LCP also provides that:

***LUP Policy 3:** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (a) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (b) Adequate access exists nearby; or (c) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

While the proposed project would include commercial and residential development, as discussed above, the immediate neighborhood surrounding the project site is comprised of primarily residential development. The Pedro Point Shopping Center is located approximately a quarter mile to the east of the subject site, and Pacifica State Beach, as well as the access points to the beach, are located to half a mile to the northeast of this parcel. The Pacific Ocean is to the north of the project site, separated by a road and a blufftop residence, as well as to the west, separated by the Pedro Point/Shelter Cove residential neighborhood. In addition, areas to the north of the site are separated from

the ocean by a steep, approximately 40-foot high blufftop without an access point or a sandy beach area below, and to the west is Shelter Cove, which is not easily accessible.

In short, the City-approved project appears to have few public recreational access impacts, and it does not appear that the types of requirements and mitigations sought by the Appellant could be found to be required under the LCP. The City's findings that public recreational access would not be affected would appear well supported by the evidence, and this appeal contention does not raise a substantial LCP conformance issue with respect to public recreational access.

Agriculture

The Appellant contends that this property is known locally as the "llama field", an area where llamas used to be kept, and as such that priority should be given to agricultural uses if feasible. Specifically, the Appellant cites LUP Policy 19, which provides that: "The maximum amount of prime agricultural land shall be maintained in agricultural production."

The land use and zoning designations of this property are Commercial and Neighborhood Commercial/Coastal Zone Combining District (C-1/C-Z), respectively, which allows for coastal related and visitor-serving commercial uses. In addition, the LCP describes the priority land use for this section of the Pedro Point – Shelter Cove area as "commercial with an emphasis on coastal-related and/or visitor-serving uses", and does not reference existing agriculture uses, or fostering agricultural uses going forward. There does not appear to be evidence to suggest that the site is prime agricultural land, and it is not in agricultural production in any case, and thus LUP Policy 19 is inapplicable here. This appeal contention does not raise a substantial LCP conformance issue with respect to agriculture.

Neighborhood and Community Character

The Appellant contends the City-approved project is incompatible with the character and scale of the Pedro Point neighborhood in terms of the project's design, parking, and circulation elements. Pursuant to the LCP, the Pedro Point neighborhood is a mix of visitor and neighborhood commercial uses with a strong residential base. The LCP emphasizes the importance of protecting the attractive appearance and mixed value housing opportunities of the residential area and that the design and scale of new infill development be compatible with the existing neighborhood (see LUP page C-54). Further, the LCP states that small scale, rustic design and ample landscaping would complement the existing commercial area (see LUP page C-56). In addition, the LCP protects existing neighborhood character and Pacifica's coastline generally, stating on LUP page C-106:

Community Scale and Design: *The conclusions aimed at protecting the existing scale and open appearance and character of Pacifica's coastline are: ... Modern building and parking standards shall be incorporated in such a way that the existing character of the neighborhood or area is not disrupted*

The City-approved project includes one two-story building with parking at the rear of the building accessed via Kent Road and landscaping elements both in the parking area and bordering the proposed development. Immediately adjacent to the site on Kent Road are residential buildings with two-story elements, and across the street on Danmann Avenue is the Pedro Point Firehouse and other two-story residential development, all of which have similar design and scale to the City-approved project. The design of the City-approved project is rustic and consistent with design elements of other buildings along Danmann Avenue. The project uses a variety of facade materials, step-backs, awnings, and patio areas, thus making the design appear modest in scale, despite the intended commercial use on the ground level.

In terms of the LCP requirement to maintain the mixed value and economic mix of housing opportunities in this area, the project proposes four new apartment units on the second story, including both one-bedroom and two-bedroom options, and thus would expand the type of housing opportunities currently provided in the neighborhood, which is primarily composed of single-family residences. In short, the City's findings that character and housing opportunities would be maintained and enhanced would appear well supported by the evidence, and this appeal contention does not raise a substantial LCP conformance issue with respect to neighborhood and community character.

Circulation and Parking

The LCP requires that new development provide adequate off-street parking facilities to meet its demand, including in order to maintain, enhance, and not adversely impact public access to the coast (LUP Policy 25), including as it relates to circulation. The IP states:

IP Section 9-4.3204(i): ...that the location, size, and intensity of the proposed operation will create a hazardous or inconvenient vehicular or pedestrian traffic pattern, taking into account the proposed use as compared with the general character and intensity of the neighborhood. ...

IP Section 9-4.3204(ii): ... That the accessibility of off-street parking areas and the relation of parking areas with respect to traffic on adjacent streets will create a hazardous or inconvenient condition to adjacent or surrounding uses. ...

The City-approved development includes nineteen parking spaces, which exceeds the minimum required for the combined residential and commercial uses per the LCP by nearly 20%,⁷ and as such is not likely to impact on-street parking in the neighborhood, including related to public access parking. In addition, the City concluded that the proposed development would improve pedestrian safety by installing a new sidewalk and that the development would safely facilitate vehicular traffic, and there does not

⁷ A minimum of 8 parking spaces are required for the four residential units (i.e., 1.5 spaces per each 1-bedroom unit, 2 spaces per each 2-bedroom unit, and one guest space per each 6 residential units) per IP Section 9-4.2818(a)(2). And a minimum of eight parking spaces are required for the 2,292 square-foot commercial development based on one space per 300 square feet of commercial development (per IP Sections 9-4.2818(b)(2), (c)(2), and (c)(3)). Thus, a total of 16 spaces at a minimum are required, and the project provides 19 spaces (i.e., almost 20% more than the minimum required).

appear to be evidence to suggest otherwise. Thus, this appeal contention does not raise a substantial LCP conformance issue with respect to parking and circulation.

3. Substantial Issue Conclusion

When considering a project that has been appealed to it, the Commission must first determine whether the local government's decision on the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over the CDP application 'de novo' (i.e., completely reviewing the CDP application for the proposed project for LCP consistency). At this substantial issue stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP conformance. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue: 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. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In this case, the five factors, considered together, strongly support a conclusion that the City's approval of a CDP for the proposed project raises a substantial LCP conformance issue. First, the City's decision lacks legal and factual support, including because there is inadequate evidence in the record to conclude that the subject development is conditioned to address coastal hazards in the way that the LCP requires. As for precedence, the City-approved project may set an adverse precedent for future interpretations of the City's LCP as it includes decisions related to critical shoreline area resources that appear to conflict with LCP hazards and coastal resource protection policies. In addition, there are other similarly situated lots nearby where development could raise similar resource issues, and application of the same principles in cases there would lead to similar outcomes.

Further, cumulative impacts of allowing such development under similar circumstances along the coastline of the City of Pacifica could result in inadequate/inappropriate coastal hazards evaluations and degradation of coastal resources over time and on a much larger scale, and weighs heavily in favor of finding substantial issue. Should this City-approved project go forward, it may pose a dangerous precedent that could be relied upon to analyze blufftop development requirements and shoreline armoring allowances, creating a serious threat to all the public access, recreational, sand supply dynamics, and visual resources present in the Pacifica coastal planning area.

Finally, the project raises issues of regional and statewide significance as it could result in significant coastal resource impact issues. In this case, the appeal raises issues associated with the development of coastal bluff areas that are known to be vulnerable to hazards. Likewise, allowing shoreline armoring for any development, and not narrowing the circumstances to those allowable as prescribed by the LCP, contributes

to impacts to public resources, most notably to public access and natural shoreline processes, that themselves are not allowed.

As the Coastal Commission and local governments up and down the coast prepare responses and strategies to minimize the impacts of sea level rise, it will be increasingly necessary to assure adverse impacts to public resources are avoided and eliminated where possible by only allowing shoreline armoring in very narrow circumstances, similar to those described in the Coastal Act and the certified Pacifica LCP. It is local approvals such as these that raise issues of statewide significance given the potential to set precedent for approval of development in hazardous areas without appropriate conditions.

In this case, these five factors, considered together, support a conclusion that the City's approval of a CDP for this project raises a substantial issue of Coastal Act and LCP conformance. Thus, and for the reasons stated herein, the Commission finds that Appeal Number A-2-PAC-20-0073 raises a substantial issue with respect to the City-approved project's conformity with the coastal hazards policies of the certified LCP. Therefore, the Commission finds that a substantial issue exists with respect to the City-approved project's conformance with the certified City of Pacifica LCP and takes jurisdiction over the CDP application for the proposed project.

H. Coastal Development Permit Determination

The standard of review for this CDP determination is the City of Pacifica certified LCP and, because it is located between the first public road and the sea, the access and recreation policies of the Coastal Act. All Substantial Issue determination findings above are incorporated herein by reference.

1. Coastal Hazards

Applicable LCP Provisions

The City of Pacifica LCP establishes several requirements for new development to address coastal hazards, including minimizing risks to life and property, assuring stability and structural integrity, and requirements to maintain safety and stability over time, including in relation to 100-year storm events and over the anticipated design life of the development, defined by the LCP generally as a 100-year analytical time frame. Please see page 17 of this report for a complete list of applicable LCP policies.

Analysis

Sea level has been rising for many years. Several different approaches have been used to analyze the global tide gauge records in order to assess the spatial and temporal variations, and these efforts have yielded sea level rise rates ranging from about 1.2 mm/year to 1.7 mm/year (about 0.5 to 0.7 inches/decade) for the 20th century, but since 1990 the rate has more than doubled, and the rate of sea level rise continues to accelerate. Since the advent of satellite altimetry in 1993, measurements of absolute sea level from space indicate an average global rate of sea level rise of 3.4 mm/year or

1.3 inches/decade – more than twice the average rate over the 20th century and greater than any time over the past one thousand years.⁸ Recent observations of sea level along parts of the California coast have shown some anomalous trends; however, the best available science demonstrates that the climate is warming, and such warming is expected to cause sea levels to rise at an accelerating rate throughout this century.

The State of California has undertaken significant research to understand how much sea level rise to expect over this century and to anticipate the likely impacts of such sea level rise. In April 2017, a working group of the Ocean Protection Council's (OPC) Science Advisory Team released *Rising Seas in California: An Update on Sea-Level Rise Science*.⁹ This report synthesized recent evolving research on sea level rise science, notably including a discussion of probabilistic sea level rise projections as well as the potential for rapid ice loss leading to extreme sea level rise. This science synthesis was integrated into the OPC's State of California Sea-Level Rise Guidance 2018 Update.¹⁰ This Guidance document provides high-level, statewide recommendations for state agencies and other stakeholders to follow when analyzing sea level rise. Notably, it provides a set of projections that OPC recommends using when assessing potential sea level rise vulnerabilities for various projects. Taken together, the Rising Seas science report and updated State Guidance account for the current best available science on sea level rise for the State of California.

The updated projections in the 2017 Rising Seas report and the 2018 OPC Guidance suggest sea levels could rise between 3.4 and 6.9 feet by 2100 at the San Francisco tide gauge,¹¹ depending on future greenhouse gas emissions. The OPC Guidance recommends that development with only moderate adaptive capacity, including residential development, use the high end of this range, 6.9 feet, to inform decisions regarding development. The updated Rising Seas science report and OPC Guidance also include an extreme scenario (termed the "H++" scenario) of 10.2 feet of sea level rise by 2100 based on recent modelling efforts that look at possible sea level rise associated with rapid ice sheet loss. These projections and recommendations are incorporated into the 2018 update of the Coastal Commission Sea Level Rise Policy Guidance.¹² As our understanding of sea level rise continues to evolve, it is possible that sea level rise projections will continue to change as well (as evidenced by the

⁸ See <http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf>.

⁹ Griggs, G, Árvai, J, Cayan, D, DeConto, R, Fox, J, Fricker, HA, Kopp, RE, Tebaldi, C, Whiteman, EA (California Ocean Protection Council Science Advisory Team Working Group). *Rising Seas in California: An Update on Sea-Level Rise Science*. California Ocean Science Trust, April 2017.

¹⁰ See OPC State of California Sea-Level Rise Guidance, 2018 Update at http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A OPC_SLR_Guidance-rd3.pdf.

¹¹ The OPC Guidance provides sea level rise projections for 12 California tide gauges, and recommends using the projections from the tide gauge closest to the project site. In this case, the San Francisco tide gauge is the closest tide gauge to the subject site.

¹² See <https://www.coastal.ca.gov/climate/slrguidance.html>.

recent updates to best available science). While uncertainty will remain with regard to exactly how much sea levels will rise and when, the direction of sea level change is clear and it is critical to continue to assess sea level rise vulnerabilities when planning for future development. Importantly, maintaining a precautionary approach that considers high or even extreme sea level rise rates and includes planning for future adaptation will help ensure that decisions are made that will result in a resilient coastal California.

On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore, which will result in increased flooding, erosion, and storm impacts to coastal areas. On a relatively flat beach, with a slope of 40:1, simple arithmetic shows that a 1-foot rise in sea level will result in a 40 foot landward movement of the ocean/beach interface. For fixed structures on the shoreline, such as a revetment, an increase in sea level will increase the inundation of the structure. More of the structure will be inundated or underwater than is inundated now and the portions of the structure that are now underwater part of the time will be underwater more frequently. Accompanying this rise in sea level will be an increase in wave heights and wave energy. Along much of the California coast, the bottom depth controls the nearshore wave heights, with bigger waves occurring in deeper water. Since wave energy increases with the square of the wave height, a small increase in wave height can cause a significant increase in wave energy and wave damage. Combined with the physical increase in water elevation, a small rise in sea level can expose previously protected back shore development to increased wave action, and those areas that are already exposed to wave action will be exposed more frequently, with higher wave forces. Thus, structures that are adequately safe for current storm conditions may not provide as much protection in the future.

Rising sea levels are exacerbating and will continue to intensify hazards along the shoreline, including inundation, storm flooding, erosion, saltwater intrusion into aquifers, and liquefaction. Some shoreline development will experience increasingly hazardous conditions over time; therefore, to ensure safety and structural integrity consistent with Section 30253 of the Coastal Act and its corresponding LCP sections, development must be sited and designed in such a way that takes into account the anticipated impacts of sea level rise over the full time span of development's lifetime. Changing conditions could also alter the anticipated impacts of the development upon coastal resources. In particular, coastal resources such as beaches and wetlands that are located just inland of the sea could disappear if they are squeezed between rising sea levels and a fixed line of development on the shoreline, thus impacting public access, recreation, visual, and other coastal resources. Therefore, to be consistent with the Chapter 3 policies of the Coastal Act and corresponding LCP provisions, proposed development must be sited, designed, and conditioned in such a way that considers the impact of the development upon coastal resources over its full economic life, avoiding and mitigating those impacts as appropriate.

Within this context, all development that is located in areas that could be affected by coastal hazards must also consider the ways that such hazards may be affected by sea level rise over time. That includes the subject CDP application here. The main concerns

raised by the proposed project are potential exposure to bluff and shoreline erosion, and the ways in which such erosion could lead to the pursuit of armoring to maintain site safety and stability. And although intervening development also currently exists between the subject site and the shoreline, sea level rise models suggest the site may become at risk within a time frame less than the 100 years identified in the LCP.

As indicated earlier, the Applicant's consultant estimated that the bluffs seaward and immediately to the west of the project site have historically eroded at rates ranging from 0.1 to 0.35 feet/year, and up to 0.625 feet per year,¹³ and opined that rising sea levels would have little effect on bluff erosion rates due to the hard rock present at the bluff toe. On the latter, the above discussion suggests that sea level rise is likely to have a large effect on future erosion rates. And on the former, other reputable sources, such as USGS, have identified much higher average historical retreat rates for this area ranging from 1.5 feet/year¹⁴ to 2.3 feet/year.¹⁵ Therefore, bluff erosion hazards for the site for the next 100 years are largely dependent on which historic erosion rate is used. If higher historic erosion rates are used in the analysis, then potential hazards constraints to the proposed development over its full anticipated life are greater.

The Commission's Geologist, Dr. Joseph Street, reviewed historical air photos in the project vicinity to help better understand these issues.¹⁶ From that evaluation, recent erosion of the bluff face seaward of the site, including the episodes noted by the Appellant, is apparent in the Coastal Record Project photographs, but due to the oblique angles of the photographs it is difficult to quantify amounts and rates of bluff edge retreat. This difficulty can be overcome using high-quality historical overhead aerial photographs, which in this area show a reasonably distinct bluff edge and fixed landmarks from which to measure distances to the bluff edge. Based on Dr. Street's estimates, the bluff immediately seaward and to the northwest of the project site (as far as the Shelter Cove road end) has eroded at rates of 0.1 to 0.3 feet/year over the 80 years between 1941 and the present, with the higher rates generally occurring farther west (i.e., toward Pedro Point proper). These estimates are essentially indistinguishable from the lower range of those provided by the Applicant's consultants, and suggest that the higher erosion rates identified by other researchers are likely most applicable to the western portion of the bluff nearer to Pedro Point itself. Over the last 20 years, Dr. Street indicates that bluff edge retreat rates along the same stretch of bluff were more variable, ranging from 0 to 0.6 feet/year, also consistent with the information provided by the Applicant's consultants, but still concluded that long term average annualized

¹³ Based on the 1955-2000 and 2002-2018 time frames, respectively.

¹⁴ Hapke, CJ, and Reid, D, 2007. *National Assessment of Shoreline Change, Part 4: Historical Coastal Cliff Retreat along the California Coast*. U. S. Geological Survey Open-File Report 2007-1133

¹⁵ Griggs, G, Weber, J, Lajoie, KR, Mathieson, S, 2005. "San Francisco to Año Nuevo", in Griggs, G, Patsch, K, Savoy, L (eds.), *Living with the Changing California Coast*. University of California Press, pp. 228-269.

¹⁶ Using oblique aerial photographs from the California Coastal Records Project (from 1972 to 2019) (see <http://www.californiacoastline.org>), overhead aerial photos from Google Earth (from 2002 to 2021), and historical overhead aerial photos from the University of California Santa Barbara archive (from 1941 and 2001) (see https://mil.library.ucsb.edu/ap_indexes/FrameFinder/).

erosion based on the time period between 1941 and 2021 was 0.1 to 0.3 feet/year. Given the Applicant's consultant identified a slightly higher upper end range (i.e., 0.35 feet/year), the analysis that follows uses an estimated historical erosion rate of 0.1 to 0.35 feet/year.

However, after careful review of the site's geologic setting, Dr. Street disagrees with the Applicant's consultant's conclusion that sea level rise will not affect future bluff retreat rates at the project site. While the lower bluff rock is relatively resistant, it has nonetheless proven to be susceptible to erosion over time, particularly during large storm events. As sea level rise shrinks the distance between the breaking waves and the position of the bluff toe which results in deeper water and reduced wave attenuation, the frequency and force of wave attack at the bluff toe will increase, which could increase the rate of bluff erosion. Though both the rate of sea level rise and the sensitivity of the bluff erosion response are highly uncertain, the potential for accelerated bluff retreat in the future should be factored into potential development risk.

To evaluate such potential accelerated bluff retreat, Dr. Street consulted the USGS Coastal Storm Modeling System (CoSMoS) bluff retreat tool,¹⁷ which models several transects in the immediate project area. The historical erosion rates used as an input to the CoSMoS model are higher than the 0.1 to 0.35 feet/year range provided by the Applicant's consultant and confirmed by Dr. Street,¹⁸ implying that the amount of future bluff retreat projected by CoSMoS for this particular site are likely overestimates. To mitigate for this, and instead of using the CoSMoS projections directly, Dr. Street instead applied the factor by which bluff retreat is projected to increase above the initial rate for projected sea level rise in 2100 estimated by CoSMoS. For sea level rise scenarios of 1 to 2 meters (3.3 to 6.6 feet), CoSMoS projects that average bluff erosion rates for the period between 2016 and 2100 in the project vicinity could increase by factors of 1.25 to 1.7 (125 to 170%) above the historical baseline. Applied to the highest historical retreat rate (0.35 feet/year), a 1.7x multiplier suggests an average retreat rate of 0.6 feet/year over the next 80 years, or approximately 48 feet of retreat. Extended over the next 100 years, 6.6 feet of sea level rise would result in approximately 60 feet of bluff retreat. Given that the new development is proposed to be sited at least 132 feet inland of the blufftop edge, there would still be a buffer in excess of 50 feet to account for uncertainties, as well as to protect against a large episodic erosion event late in the project life. Accordingly, based solely on the foregoing analysis, the proposed siting of the mixed-use development will likely assure stability and structural integrity, and protect against a 100-year hazard event, over the full project life, and **Special Condition 1** will assure the project is built with these setbacks specifically incorporated.

However, while 0.35 feet/year is acceptable to use in this case given the site-specific nature of Dr. Street's additional analysis, it is important to note that the actual erosion rate could be greater due to the uncertainty associated with sea level rise. The use of a

¹⁷ Barnard, PL, Erikson, LH, Foxgrover, AC, Limber, PL, O'Neill, AC, and Vitousek, S, 2018, Coastal Storm Modeling System (CoSMoS) for Central California, v3.1 (ver. 1f, May 2020): U.S. Geological Survey data release, <https://doi.org/10.5066/P9NUO62B>.

¹⁸ CoSMoS applied the USGS rates identified in the 2007 Hapke and Reid (2007).

higher historical bluff retreat rate (such as the highest short-term erosion rate of 0.6 feet/year observed for the 2001-2021 period) and accounting for the potential effects of sea level rise could result in bluff retreat projections of greater than 100 feet, which would threaten the proposed structure within a 100-year project life. As such, the project is conditioned to require waiver of liability and assumption of risk, removal/relocation triggers tied to criteria that will define when it is no longer appropriate to maintain the project in light of coastal hazards, alerts for future buyers regarding the coastal hazards risk, and a deed restriction to be recorded against the parcels governed by this CDP. In addition, in order to assure the proposed development minimizes risk to life and property without shoreline armoring consistent with the requirements of the LCP, the CDP is conditioned to prohibit the use of shoreline protective devices to protect the approved development, and the Applicant is required to waive any rights to construct any such shoreline protective devices to protect the approved development should it become threatened at some point in the future, to assume the risks associated with this type of development in light of coastal hazards, and to agree to remove the development if the development becomes threatened (see **Special Conditions 4 and 5**).

Regarding risks from tsunami inundation, this project site is located in an area of concern because site elevations are lower than surrounding areas (+30 - 40 ft MSL), and the project site lot is in very close proximity across the street from the California Geological Survey Tsunami Hazard Zone, which defines the tsunami runup zone intended for evacuation planning. Further, even if the property itself is not at risk or at low risk for inundation from a tsunami event, a compounding concern is that, given the road configuration in the Pedro Point area, the entire neighborhood could be cut off from the rest of Pacifica and emergency services in the aftermath of a major tsunami. Finally, the City of Pacifica has no formalized tsunami evacuation plan for this area. Therefore, to assure coastal hazards to the site are minimized consistent with the LCP, and in an effort to assure public safety, **Special Condition 3** requires the applicant prepare a tsunami preparedness plan to mitigate for the hazards associated with a tsunami event specific to this area of Pacifica.

With the inclusion of these conditions of approval related to mitigating for the impacts of coastal hazards risks, the project can be found consistent with the City of Pacifica's LCP standards regarding safety from coastal hazards.

2. Public Recreational Access

As the project site is located between the first public road and the sea, a finding of consistency with Coastal Act public access and recreation policies is required. The Coastal Act requires that maximum public access be provided, that development shall not interfere with the public's access to the sea, and that new development provide for public access unless doing so would be inconsistent with public safety, coastal resources, or agricultural lands, or unless adequate access exists nearby. Further, the Coastal Act prioritizes free and low-cost access, and parking in this area qualifies as that given its proximity to Pacifica State Beach. While parking lots within the vicinity provide access to Pacifica State Beach, beach parking during peak times is heavily

used, there is user conflict between parking needs for the commercial uses in the area, and thus on-street parking within walking distance of the beach is also critical to providing public access for inland visitors.

To address resident and user parking needs, 19 off-street parking spaces are provided with the proposed project, which exceeds the minimum LCP standards by 3 spaces (or by nearly 20%). For the residential units, 1.5 parking spaces are required for each one-bedroom unit, 2 parking spaces are required for each two-bedroom unit, and 1 guest space is required per each six residential units. As such, 8 parking spaces are required and provided for the proposed residential units. For the commercial space, 1 parking space is required per each 300 square feet of gross leasable space for retail stores and service establishments, banks, financial insurance, social services, general business, and professional offices, and thus 8 parking spaces are required and provided for the 2,292 square feet of commercial development proposed for the project. Thus, the proposed project provides three extra parking spaces above the LCP minimum. As such, the project should adequately account for all generated parking needs on-site and thus is not likely to impact on-street parking needs for coastal access or other uses in the neighborhood. Further, and as previously discussed, the proposed project appears to have few public recreational access impacts, and it does not appear that the types of requirements and mitigations sought by the Appellant could be found to be required under the LCP. As such, the proposed project can be found consistent with the public access and recreation requirements of the Coastal Act.

3. Other

Disclosure

The proposed project represents a unique set of facts, and this CDP includes important terms and conditions reflecting the set of facts as they apply to this approval, including the required conditions of approval. To ensure that the terms and conditions of this approval are clear to the Applicant, as well as any future owners, renters, and lessees, this approval requires that the CDP terms and conditions be recorded as covenants, codes, and restrictions against use and enjoyment of the properties, and for them to be explicitly disclosed in all real estate transactions (see **Special Conditions 5 and 8**).

Future Permitting

The Commission herein fully expects to review any future proposed development at and/or directly related to this project and/or project area, including to ensure continued compliance with the terms and conditions of this CDP through such future proposals, but also to ensure that any such future proposed development can be understood in terms of those terms and conditions. Thus, any and all future proposed development at and/or directly related to this project, this project area, and/or this CDP shall require a new CDP or a CDP amendment that is processed through the Coastal Commission, unless the Executive Director determines a CDP or CDP amendment is not legally required (see **Special Condition 6**).

Indemnification

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its actions on the pending CDP applications 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 **Special Condition 7** 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, or challenging any other aspect of its implementation, including with respect to condition compliance efforts (see **Special Condition 8**).

4. CDP Determination Conclusion – Approval with Conditions

As conditioned, the Commission concludes that approval of the development adequately addresses coastal hazards, public access, and recreation. Accordingly, the Commission finds that the project, as conditioned, is consistent with the certified City of Pacifica LCP and the public access and recreation policies of the Coastal Act.

I. California Environmental Quality Act (CEQA)

Section 13096 of Title 14 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 Pacifica, acting as the lead CEQA agency, found the project categorically exempt from CEQA (pursuant to CEQA Guidelines, Title 14, California Code of Regulations, Section 15303, (a) and (b)). 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 findings in this report have discussed the relevant coastal resource issues with the proposal, and the CDP terms and conditions identify appropriate mitigations to avoid and/or lessen any potential for adverse impacts to said resources. Further, all public comments received to date have been addressed in the preceding findings, which are incorporated herein in their entirety by reference.

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).

5. APPENDICES

A. Substantive File Documents¹⁹

- *Geotechnical Investigation for Proposed New Mixed-Use Building*, GeoForensics Inc., dated November 1, 2019
- *Danmann Avenue Geotechnical Supplement* GeoForensics Inc., dated January 15, 2021
- Project Plans Submitted for May 4, 2021 Planning Commission Meeting
- Staff Report from May 4, 2021 Planning Commission
- Staff Report from November 9, 2021 City Council Meeting

B. Staff Contacts with Agencies and Groups

- City of Pacifica Planning Department
- Pedro Point Neighborhood Association

¹⁹ These documents are available for review from the Commission's North Central Coast District office.