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F15a

Appeal Filed: 1/7/2021
Action Deadline: 3/19/2021
Staff: JKN - SF
Staff Report: 2/19/2021
Hearing Date: 3/12/2021

STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number: A-2-DYC-21-0001
Applicant: Sand Hill Property Company
Appellant: Phillip Seitzer
Local Government: Daly City
Local Decision: City coastal development permit application number UPR-09-20-014692 approved by the City Council on December 14, 2020
Location: Undeveloped roughly 4-acre property at 2152 Olympic Way, between Skyline Boulevard and the blufftop edge, in Daly City, San Mateo County (APNs 002-011-060, -120, -130)
Project Description: Subsurface geotechnical investigation to help characterize and evaluate potential geotechnical hazards (in support of a future potential CDP application)
Staff Recommendation: No Substantial Issue

IMPORTANT HEARING PROCEDURAL NOTE

Please note that at the hearing for this item the Commission will not take testimony on staff's substantial issue 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 such testimony. If the Commission does decide 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 those time limits). Only the

Applicant, aggrieved persons, the local government, and their proxies/representatives are allowed to testify during this substantial issue phase of the hearing, and other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application, and it will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does not raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

SUMMARY OF STAFF RECOMMENDATION

On December 14, 2020, Daly City approved a CDP for a subsurface geotechnical investigation to help characterize and evaluate potential geotechnical hazards on a 4.27-acre blufftop site in Daly City in support of a future potential CDP application. The project site is an undeveloped blufftop property separated from the ocean by a steeply-sloped bluff to the west that is crisscrossed by public trails and is part of State Parks' Thornton State Beach unit. The site is bordered to the north by equestrian stables, to the south by public and private open space lands, and to the east by Skyline Boulevard, which runs parallel and adjacent to Olympic Way and intersects John Daly boulevard just south of the site.

The Appellant contends that the approved project is inconsistent with Daly City Local Coastal Program (LCP) policies related to grading operations, sensitive habitat protections, geologic and seismic constraints, and public safety. The Appellant also raises issues refuting the City's CEQA exemption determination, as well as concerns regarding LCP policies that may apply to future potential development at the site. Neither are valid appeal contentions; the first because CEQA compliance is not an applicable LCP or Coastal Act access and recreation appeal standard, and the second because any potential future project would be subject to its own CDP process and appeal contentions related to it are not here properly before the Commission. After reviewing the local record in light of the appeal contentions, staff does not believe that the City's approval of a CDP for the project raises a substantial issue of LCP conformance.

Specifically, in terms of sensitive habitat protections, current available evidence does not suggest that habitat on site constitutes an environmentally sensitive habitat area (ESHA). In addition, the City's conditions of approval require that the Applicant comply with a number of best management practices to protect habitat resources both on- and off-site (including sediment and erosion controls, spill pollution prevention measures, and protections for nesting bird species). Thus, there are adequate habitat protection measures incorporated into the project to protect habitat consistent with LCP requirements. In terms of geologic and seismic constraints and public safety requirements, staff (including the Commission's staff geologist) does not believe that the temporary exploration work will lead to site instability inconsistent with LCP requirements (and, in fact, will help to inform an analysis of site constraints regarding these very issues). With regard to grading operations, subsurface exploration of this

type cannot be undertaken without grading, and adequate safeguards are in place to protect coastal resources.

As a result, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP (or Coastal Act access and recreation) conformance issue and that the Commission decline to take jurisdiction over the CDP application for this project. The single motion necessary to implement this recommendation is found on page 4 below.

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EXHIBITS

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Exhibit 3 – City-Approved Project Plans

Exhibit 4 – City Notice of Final Local CDP Action

Exhibit 5 – City Council Staff Report

Exhibit 6 – Appeal of City CDP Action to the Coastal Commission

Exhibit 7 – Applicable LCP Provisions

Exhibit 8 – WRA Environmental Consultants Memo on Best Management Practices

Exhibit 9 – Applicant’s Response Letter to Appeal Contentions

I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission will not hear the application de novo and that the local CDP action will become final and effective. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in a finding of no substantial issue, and the local action will become final and effective. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission determine that Appeal Number A-2-DYC-21-0001 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603, and I recommend a yes vote.*

Resolution to Find No Substantial Issue: *The Commission finds that Appeal Number A-2-DYC-21-0001 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and the public access and recreation policies of the Coastal Act.*

II. FINDINGS AND DECLARATIONS

A. Project Location and Description

The City-approved project is located at 2152 Olympic Way in Daly City in San Mateo County. The 4.27-acre project site is an undeveloped blufftop property located just seaward of Skyline Boulevard, and it is separated from the beach and ocean below by a steeply-sloped bluff to the west that is crisscrossed by public trails and is part of State Parks' Thornton State Beach unit. The site is bordered to the north by equestrian stables, to the south by public and private open space lands, and to the east by Skyline Boulevard, which runs parallel and adjacent to Olympic Way and intersects John Daly boulevard just south of the site. The site is located within the LCP's Light Commercial (C-1) zoning district and Resource Protection (RP) combining district, with a LCP Land Use Plan (LUP) designation of Commercial – Retail and Office. The C-1 designation allows for retail, office, and services of the type and scale normally found in a neighborhood shopping center. The permitted uses in the RP designation are the same as the underlying district, however additional application information is required for proposed development in this district and additional development regulations are applicable to assure coastal resource protection. The only immediately adjacent development is comprised of existing equestrian stables to the north; the west and south sides of the parcel abut undeveloped, open space, with a Thornton State Beach parking lot and accessway just south of that and opposite John Daly Boulevard.

The majority of the site consists of deep sandy soils, and the majority of the vegetated areas consist of ice plant mats interspersed with ruderal and/or scrubby plant species. The topography is relatively flat with minimal grade changes. Due in part to its proximity to the blufftop edge, as well as Thornton State Beach and its adjacent open space, this property has historically been used by the public for hiking and dog-walking, and a

series of well-worn footpaths cross the site. In addition, and in light of the site's proximity to the adjacent equestrian stables to the north, equestrians cross the site to gain access to trails that head down to the beach.

Originally, the Applicant submitted an application to the City requesting that the City process an LCP amendment to facilitate potential future construction of a retreat center on the subject site, and also submitted a CDP application for the proposed center. As part of those applications, the Applicant also submitted two geotechnical feasibility reports, both of which recommended more detailed subsurface exploration of the site to better understand the geological conditions and constraints. As such subsurface exploration constitutes development of its own, the Applicant submitted the CDP application that is the subject of this appeal to the City. However, to be clear, only the City's CDP action related to such subsurface exploration is before the Commission as part of this appeal, and any future LCP amendments or CDP applications will be subject to their own separate processes.

The City-approved project would allow for six soil borings, five infiltration test pits, and one exploratory trench. The soil borings would be approximately 10 to 250 feet in depth and up to 10 inches in diameter, while the test pits would be approximately 5 feet wide, 5 feet long, and 5 feet deep. Lastly, the exploratory trench would be approximately 5 feet deep, 5 feet wide, and approximately 300 to 350 feet long, extending inland across the site from approximately 20 feet from the blufftop edge. Vegetation would be removed in the areas of proposed excavation. The Applicant's geotechnical consultant (ENGEO) estimates that the proposed exploration would take approximately two to six weeks to complete, depending on the availability of subcontractors to conduct the various exploration efforts concurrently, each of which is expected to take two weeks. Best management practices (e.g., erosion and sediment controls, worker awareness plan, pollution and spill prevention, fencing, etc.) would be implemented to minimize any indirect impacts to sensitive aquatic resources and special-status plant species that may occur off-site, and specific measures have been incorporated to protect nesting birds on-site. Following the identified exploratory efforts, all boring holes, pits, and trenches would be refilled.

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

B. Daly City CDP Approval

On December 14, 2020, the Daly City City Council approved a CDP for the subsurface geotechnical investigations described above. Notice of the City's final action on the CDP was received in the Coastal Commission's North Central Coast District Office on December 22, 2020 (see **Exhibit 4**). The Coastal Commission's ten-working-day appeal period for this action began on December 23, 2020 and concluded at 5 p.m. on January 7, 2021. One valid appeal was received during the appeal period (see **Exhibit 6**).

C. Appeal Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP

decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. 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 is located between the sea and the first public road paralleling the sea and because development is proposed within 300 feet (20 feet to be exact) of the seaward face of a coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Coastal Act Section 30625(b)(2) requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that “no substantial issue” is raised by such allegations.¹ Under Coastal Act Section 30604(b), if the Commission conducts the de novo portion of an appeals hearing (upon making a determination of “substantial issue”) and finds that the proposed development is in conformity with the certified LCP, the Commission may issue a CDP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Coastal Act Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea, and thus this additional finding would be required if the Commission were to approve the project following the de novo portion of the hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons opposed to the project who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding the substantial issue question must be

¹ The Coastal Act requires that the Commission hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603 (see Section 30625(b)(2)). Section 13115(c) of the Commission’s regulations provides 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; 2) the extent and scope of the development as approved or denied by the local government; 3) the significance of the coastal resources affected by the decision; 4) the precedential value of the local government’s decision for future interpretations 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.

submitted in writing. Any person may testify during the de novo CDP determination stage of an appeal (if applicable).

D. Summary of Appeal Contentions

The Appellant contends that the City-approved project raises LCP consistency issues relating to grading operations, sensitive habitat protections, geologic and seismic constraints, and public safety. Specifically, the Appellant contends that the approved development is inconsistent with applicable LCP policies because: 1) there are no measures to prevent the noise, dust, and debris from the exploration process from disturbing local plant and animal communities, contrary to required LCP protections for these plants and animals at Thornton State Beach; and 2) there are no measures proposed to assure the exploration work itself will not destabilize the site, contrary to LCP requirements to mitigate for geologic, seismic, and safety concerns on vacant parcels along the blufftop.² Please see **Exhibit 6** for the appeal contentions.

E. Substantial Issue Determination

Analysis

LCP LUP Habitat Area Policy 2 states that “The development and use of Mussel Rock Park, Daisaku Ikeda Canyon, and Thornton State Beach shall include measures to protect and mitigate existing plant and animal communities.” Existing plant and animal communities on the subject property are limited to non-sensitive ice plant mats interspersed with ruderal and scrubby species. In addition, biological resource evaluations found common nesting birds have the potential to be found onsite, and that project activities could potentially impact them. Lastly, sensitive habitats, including wetland resources and sensitive species, have been noted to potentially occur on adjacent Thornton State Beach property.

In terms of the Appellant’s habitat contentions, current available evidence does not suggest that habitat on site constitutes an environmentally sensitive habitat area (ESHA). Further, the City’s conditions of approval require that the Applicant comply with a number of best management practices to protect habitat resources both on- and off-site. Specifically, the Applicant is required to comply with all applicable best management practices (BMPs) as recommended by WRA Environmental Consultants and outlined in the WRA Environmental Consultants Biological Resources Assessment and associated memos (see **Exhibit 5, pages 6-7**). These BMPs have been specifically designed to minimize indirect impacts to sensitive aquatic resources and special-status plant species that might potentially occur off-site (and include, but are not limited to, erosion and sediment control measures, worker awareness training and compliance requirements, pollution and spill prevention measures, construction fencing, safety and

² The Appellant also raises issues refuting the City’s CEQA exemption determination, as well as concerns regarding LCP policies that may apply to future potential development at the site. Neither are valid appeal contentions; the first because CEQA compliance is not an applicable LCP or Coastal Act access and recreation appeal standard, and the second because any potential future project would be subject to its own CDP process, and appeal contentions related to it are not here properly before the Commission.

cleaning measures for equipment and vehicles, etc.). Other City-required conditions of approval are specific to nesting bird protections onsite and include limitations and requirements limiting project activity if conducted during the nesting season. Therefore, in this case, the City-approved project includes adequate mitigations for the protection of potentially affected habitat resources consistent with LCP requirements. Thus, the concerns raised on appeal regarding impacts to such habitats do not rise to the level of a substantial issue.

With respect to site stability allegations, the LUP New Development Policy 4 states that “Development of remaining vacant parcels along the blufftops shall be prohibited, unless geologic and seismic constraints and public safety requirements can be mitigated.” As such, and because this LUP policy applies to the subject property, the Applicant is in a position of needing to provide evidence to the City of same if the Applicant pursues future development on the site, thus precipitating the application that is the subject of this appeal. The Applicant’s geotechnical consultant (ENGEO) indicates that the methods and equipment proposed are commonly used to gather data in such conditions, and that the proposed subsurface exploration will not impact the stability of the area (**see Exhibit 9**). In addition, the project includes measures to avoid and/or reduce any potential impacts, including via restoration of impacted areas upon completion of testing, collection and appropriate off-site disposal of any excess materials generated during drilling, and direct oversight of all drilling and trenching activities by licensed engineering geologists, geotechnical engineers, drillers, and excavation contractors. ENGEO has also noted that other forms of testing would be insufficient to characterize and define geotechnical strength parameters and determine stability factors in order to adequately analyze long-term stability of the site. Commission staff geologist, Dr. Joseph Street, has reviewed the proposed plans and concurs that the proposed exploration work will not destabilize the site. Thus, the City-approved project has adequate measures to assure impacts to site stability are avoided, lessened, and mitigated where necessary, consistent with LCP requirements, and this allegation does not rise to the level of substantial issue.

In addition, the Appellant contends that the proposed project is in violation of LCP Resource Protection (RP) district provisions, and specifically Section 17.27.050(C)(1), which provides that “no building or structure shall be placed less than fifty feet from the edge of the bluff;” Section 17.27.050(C)(2), which provides that if development is on a blufftop, “no grading or filling operations shall be permitted except for those required as drainage and erosion control;” and Section 17.27.050(D), which provides that “no development shall be allowed on a bluff or other such surface with a slope of thirty degrees or greater and a vertical relief of ten feet or more.” With respect to Section 17.27.050(C)(1), the project does not include any type of permanent building or structure, and thus this section is not applicable to this temporary grading project. With respect to Section 17.27.050(D), the project is not located on the bluff face or in an area with such identified slopes or elevation changes. Rather the project site is located on the blufftop and it is actually fairly flat, thus the project is not inconsistent with that section.

However, the project does include both grading (i.e., for the initial excavations) and fill (i.e., for the restoration afterwards) activities on a blufftop, which are not explicitly for drainage and erosion control, and thus the project is not consistent with Section 17.27.050(C)(2). At the same time, the proposed geotechnical exploration is temporary and intended to provide information to the Applicant and the City regarding site conditions and constraints to inform potential future development, and it appears that such information at the level of depth necessary cannot be provided through other means that don't include some grading at the site. Additionally, all potential coastal resource concerns otherwise have been accounted for in the City's action allowing for the temporary activity, including restoration when complete. Thus, although technically inconsistent on this point,³ this contention does not raise a substantial issue.

Finally, the Appellant references additional LCP sections, indicating that this permit for temporary subsurface investigation should actually be understood as a series of permits, and that the additional LCP sections should be considered with regards to future proposed development of the site. The additional LCP sections reference the prioritization of visitor-serving commercial recreational facilities, specifically with regards to the blufftop above Thornton State Beach. However, contentions regarding potential future development proposals are not appropriate grounds for appeal for this CDP action for temporary development (and the temporary project does not affect any potential future visitor-serving commercial recreational outcomes for the property in any case). Further, as detailed above, the Appellant contends that the City's CEQA exemption was inappropriate. However, contentions regarding the City's compliance with CEQA are not valid appeal contentions because appeal contentions, per the Coastal Act, are limited to questions of LCP and Coastal Act access and recreation consistency.

Thus, in conclusion, none of the above appeal contentions raise a substantial issue of LCP conformance.

Five Factors

As indicated earlier, in making substantial issue determinations, the Commission may take any number of factors into mind, but the Commission's regulations also explicitly reference five analytic factors (i.e., related to the scope of the project, the significance of the coastal resources affected by it, whether issues raised are of more than local significance, whether appealed actions have sufficient factual and legal support, and the potential for such actions to prejudice future decisions under the LCP).⁴ And again, the

³ There is also an argument that the information gathered will inform appropriate and necessary drainage and/or erosion controls for the site more broadly, and that it would be difficult to devise appropriate drainage and erosion control recommendations for the site in the future without the grading approved here, thus meeting that LCP test. However, the Commission here does not need to find the project consistent with the LCP to find that the City's approval on this point does not raise a substantial issue, and does not do so here.

⁴ Again, see CCR Section 13115(c).

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, these five factors, considered together, support a conclusion that this project does not raise a substantial issue of LCP conformance. First, in terms of factual and legal support, the City's record includes information regarding required best management practices, protections for nesting bird species, and details regarding the proposed geotechnical exploration, all of which support their findings regarding consistency with the LCP's requirements for protections and mitigations for coastal resources. In sum, there is adequate factual and legal support for the City's findings.

As to the extent and scope of the development approved by the City, the development approved here includes temporary geotechnical exploration including six soil borings, five infiltration test pits, and one exploratory trench, all of which will occur in a two to six-week time frame before backfilling and completely restoring the site. Thus, the project is limited to temporary and limited-scope work. This second factor, therefore, weighs in favor of a finding of no substantial issue.

With respect to the significance of the coastal resources affected, the City's findings demonstrate the primary coastal resources that may be affected by the proposed project are biological resources and bluff stability. As indicated above, the site's vegetation cover includes primarily ice plant mats, and no special-status plant species were observed by the Applicant's consultant during a protocol-level rare plant survey conducted in July of 2020. While there is the potential for nesting birds on the site, the City's approval incorporated mitigation measures accounting for this as required conditions of approval. Only the vegetation immediately within the areas of proposed excavation would be removed, and all excavated material would be returned to the respective cut areas (or disposed of properly off-site as needed). With regard to bluff stability, technical reports were submitted that indicate the proposed work will not impact the site, and all proposed work is set back at minimum twenty-feet from the bluff edge. Thus, while the blufftop resources at issue are important, the project is not expected to result in any type of significant impacts to them, and therefore this factor weighs in favor of a finding of no substantial issue.

Likewise, with regard to precedent, the City's decision sets no particular precedent for LCP interpretation, as the project does not differ in any significant way from other proposed geotechnical explorations. As the project will not result in any significant adverse coastal resource impacts, a finding of no substantial issue will not create an adverse precedent for future interpretation of the LCP.

Finally, the appeal raises local issues that do not appear to extend past the site in question, so the project does not rise to the level of statewide significance, and this factor supports a no substantial issue determination.

In sum, these five factors as applied to the City's CDP decision support a determination that the appeal does not raise a substantial issue.

F. Conclusion

For the reasons stated above, the Commission finds that Appeal Number A-2-DYC-21-0001 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and the Commission declines to take jurisdiction over the CDP application for this project.

Appendix A – Substantive File Documents⁵

- City Council Resolution
- ENGEO Geotechnical Feasibility Report
- Cotton, Shires, & Associates, Inc. Geotechnical Feasibility Study
- WRA, Inc. Biological Resources Assessment
- ENGEO Response to Daly City CDP Comments

Appendix B – Staff Contact with Agencies and Groups

- City of Daly City Planning Department
- Thornton Beach Bluff Preserve

⁵ These documents are available for review from the Commission's North Central Coast District office.