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Appeal Filed: 2/2/2021
Action Deadline: 4/13/2021
Staff: Ryan Moroney - SC
Staff Report: 2/26/2021
Hearing Date: 3/12/2021

STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal Number: A-3-STC-21-0013

Applicant: Riverfront LLC

Appellant: Ronald Pomerantz

Local Government: City of Santa Cruz

Local Decision: City of Santa Cruz coastal development permit application number CP18-0153 approved by the City Council on January 12, 2021

Location: 418, 428, 440, 504, and 508 Front Street adjacent to the San Lorenzo River in downtown Santa Cruz

Project Description: Combine five parcels, demolish three existing commercial buildings (including two historical buildings), construct three seven-story mixed-use buildings (with 175 residential condominium units (of which 20 would be affordable units) and approximately 11,500 square feet of lower floor commercial space on Front Street and fronting the river), and related development (related to infrastructure, landscaping, etc.)

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. 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 City of Santa Cruz's CDP decision stands, and is thus final and effective.

SUMMARY OF STAFF RECOMMENDATION

The City of Santa Cruz approved a project to combine five parcels, demolish three commercial buildings (including two historical buildings) and construct three seven-story mixed-use buildings with 175 residential condominium units (of which 20 would be affordable units) and approximately 11,500 square feet of lower floor commercial space (on Front Street and fronting the adjacent San Lorenzo River) in the downtown area of the City of Santa Cruz. The City's approval also requires the Applicant to contribute at least \$400,000 and up to \$500,000 (where the final amount is dependent on specific triggers) to the City's Affordable Housing Trust Fund, as well as up to \$50,000 towards San Lorenzo River enhancements. Approximately half of the project, including one-and-a-half of the three new buildings to the south, is located within the coastal zone and subject to the City's Coastal Development Permit (CDP) approval action, while the portion outside the coastal zone is not subject to the CDP.

The Appellant contends that the City's approval of a CDP for the project would violate applicable Local Coastal Program (LCP) provisions and Coastal Act access provisions because the project: 1) does not include enough affordable units; 2) conflicts with the LCP's Downtown Plan; and 3) leads to adverse coastal resource impacts.

As to whether there are an adequate number of affordable housing units, including whether there are enough to allow the City to invoke the LCP's exception criteria to approve a larger project, two things should be noted. First, the Appellant cites to the City's density bonus and inclusionary housing requirements, but those requirements are in elements of the City's code that are not part of the LCP. So while it is a valid question as to whether the 20 affordable units are "enough" as they only account for 11% of the overall units when the non-LCP City code would suggest that at least 15% of such units (or 27 units) be affordable units (based on the code in effect when the application was filed, or 20% (35 units) based on the code now), contentions regarding compliance with non-LCP code sections themselves are not properly before the Commission. That said, the LCP (and the Coastal Act) encourages affordable housing, and thus the question of whether the City's action adequately encourages affordable housing is still germane, but not necessarily in terms of the numerical standards identified in non-LCP code sections. Finally, and perhaps most important, the City applied its inclusionary standards in identifying the required amount of affordable units

in making its state density bonus law arguments, and thus the question is relevant under this appeal for that reason as well.

Second, the City relies on the state density bonus law and its provisions to argue that the exceptions to LCP standards are appropriate. The City cited to the 20 affordable units as being adequate to qualify under the density bonus law, and thus to allow for exceptions to the LCP under it. However, the state density bonus law does not override the LCP, which is an extension of another state law, namely the Coastal Act. In fact, the state density bonus law explicitly indicates that it shall not be implemented in a way that conflicts with the Coastal Act. While it is important to harmonize different state statutes, the standard of review here is the LCP, which includes its own policy that allows for exceptions to certain numerical standards to accommodate affordable units in light of state density bonus requirements, provided that coastal resources are otherwise protected as required by the LCP.

Thus, ultimately, the question under the appeal is whether the City's action adequately protects coastal resources under the LCP (which the Appellant contends the City did not) with the exceptions applied. At this location in urban downtown Santa Cruz, the coastal resource protection question centers on how the project affects public views, public access along the river, and the river itself. In terms of public views, the LCP's affordable housing exception that the City relied upon increased the allowed maximum building height from 70 feet to approximately 80 feet, and reduced upper floor articulation, resulting in larger and bulkier buildings than are allowed by the LCP. In staff's view, while the deviations are not insignificant, the larger buildings should not significantly adversely affect public views any more than a 70-foot-tall building would at this location, particularly given the urban downtown context.

Ultimately, the question is whether the 20 affordable units are adequate to satisfy the LCP's requirement to encourage affordable housing and to allow for the LCP exceptions that accommodate larger and bulkier buildings than are allowed by the LCP. And that is a tougher and more subjective question under the LCP. The Applicant is also required to contribute \$400,000 to \$500,000 to the City's affordable housing fund, which also helps to encourage affordable housing in a very tangible way. At the same time, if the project had been approved consistent with City inclusionary housing requirements, 7 to 15 more affordable units would be needed to meet the baseline requirement under those standards. But those requirements are not part of the LCP and are not part of the standard of review for a CDP.

As to the river and public access, an important objective of the LCP's Downtown Plan is to better orient downtown development to the river, both to enliven public access along the river levee pathways (i.e., the "Riverwalk") and to have the river itself become a more connected part of the downtown experience, including to help foster better river enhancement. Here, the project includes new lower-floor visitor-serving commercial space, as well as new physical space to accommodate public plazas and enhanced public access on the river side (by filling the area between the buildings and the levee to create more useable space). These components should significantly improve public access in this area and help to encourage additional projects to do the same as they

come forward (this is the first such project approved under the Downtown Plan). And the \$50,000 contribution to help enhance the river corridor itself also addresses these needs.

Here, staff has concluded that the project as a whole both adequately addresses affordable housing requirements (through the 20 affordable units and the monetary contribution) and it includes significant public benefits (river and Riverwalk enhancements), and that the City's action does not raise a substantial LCP conformance issue. To be clear, this conclusion is based in the LCP and it is not rooted in any other law, whether state density bonus law (with which the project is not in conflict) or non-LCP City code sections. Staff are firm believers in the principle of accommodating both housing and affordable housing in urban and developed areas with readily available public services and infrastructure to accommodate it, such as in downtown Santa Cruz, when it can be accommodated without significant coastal resource impacts and be consistent with the LCP. These types of infill projects, with affordable units located inland from the main shoreline area of the City (i.e., away from prime visitor-serving areas along the shoreline corridor), that follow the LCP are critical to help address the acute housing shortages—and especially affordable housing shortages—in our coastal communities. Potential numeric exceptions for projects like this are allowed by the LCP when coastal resources are adequately protected, and that appears to be the case for this project. Projects like this also help to relieve pressure for housing projects that might be more on the periphery of urban areas, in rural or sensitive habitat areas, or in prime shoreline visitor areas, where such projects can raise significant coastal resource concerns.

Thus, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP (or Coastal Act access) 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 6 below.

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EXHIBITS

- Exhibit 1 – Project Site Map
- Exhibit 2 – City-Approved Project Plans
- Exhibit 3 – City Final Local CDP Action Notice
- Exhibit 4 – Appeal of City CDP Decision
- Exhibit 5 – City of Santa Cruz Downtown Plan
- Exhibit 6 – Staff Correspondence to the City
- Exhibit 7 – Supplemental Visual Simulations

CORRESPONDENCE

EX PARTE

1. 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 would not take jurisdiction over the underlying CDP application for the proposed project and would not conduct further hearings on this matter, and that the local government CDP decision stands and is thus final and effective. To implement this recommendation, staff recommends a yes vote on the following motion which, if passed, will result in the recommended no substantial issue finding. If the motion fails, then the Commission will have instead found a substantial issue and will instead take jurisdiction over the subject CDP application for future hearing and action. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission determine that Appeal Number A-3-STC-21-0013 **raises no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603, and I recommend a **yes** vote.*

Resolution to Find No Substantial Issue. *The Commission finds that Appeal Number A-3-STC-21-0013 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 Program and/or the public access and recreation policies of the Coastal Act.*

2. FINDINGS AND DECLARATIONS

A. Project Location and Description

The City-approved project is located on the east side of Front Street between Front Street and the San Lorenzo River in downtown Santa Cruz and spans five different properties occupied by three existing single-story commercial structures. The site has approximately 423 feet of street/river frontage and generally spans the area between the terminus of Cathcart Street and the Downtown Metro Center. The site is zoned CBD (Central Business District)/FP-O (Floodplain Overlay District)/CZ-O (Coastal Zone Overlay District) and is surrounded by parcels with the same zoning to the north (except those parcels are not part of the CZ-O), west, and south that are developed with a range of commercial and mixed-use buildings and uses, with the exception of the Metro Center that is located on a parcel zoned for Public Facilities (PF). As indicated, the San Lorenzo River is located to the east and is separated from the site by the river levee (approximately 10-feet above the grade of Front Street), on top of which is the public access Riverwalk. The entire project site is located within the LCP's Downtown Plan area and specifically within that Plans' Front Street/Riverfront Corridor. Approximately half of the project, including one-and-a-half of the three new buildings to the south, is located within the coastal zone and subject to the City's CDP approval action, while the portion outside the coastal zone is not subject to the CDP.

The City-approved project would combine the five parcels, demolish the three commercial buildings (two of which are identified as historical), construct three seven-story mixed-use buildings with 175 residential condominium units and approximately 11,500 square feet of lower floor commercial space (on Front Street and fronting the Riverwalk), and includes related development (related to infrastructure, landscaping, etc.). In terms of the condominium units, the project includes 53 studio units, 89 one-bedroom units, and 33 two-bedroom units, where 20 of these units would be restricted as affordable to very-low- and low-income households in perpetuity (with 15 units at the very-low-income level and 5 units at the low-income level).^{1,2} The City-approved project also includes two pedestrian passageways between buildings extending from Front Street to the Riverwalk, and expanded publicly accessible outdoor space between the buildings and the Riverwalk at the same elevation as the Riverwalk (i.e., through filling the area between the buildings and the levee). In addition, the City's approval also requires the Applicant to contribute at least \$400,000 and up to \$500,000 (where the final amount is dependent on specific triggers) to the City's Affordable Housing Trust Fund, as well as up to \$50,000 towards San Lorenzo River enhancements.

See **Exhibit 1** for location maps and ground level photos and **Exhibit 2** for the approved project plans and visual simulations.

B. City of Santa Cruz Approval

On January 12, 2021 the Santa Cruz City Council approved a CDP for the proposed project by a vote of 5-2. Prior to the City's action, Commission staff sent two letters identifying various concerns with the proposed project (see **Exhibit 6**). The City's notice of that final CDP action was received in the Coastal Commission's Central Coast District Office on January 19, 2021 (see **Exhibit 3**), and the Coastal Commission's ten-working-day appeal period for this action began on January 20, 2021 and concluded at 5 p.m. on February 2, 2021. One valid appeal (discussed below) was received during the appeal period.

C. Appeal Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; 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

¹ Where the very-low-income level is calculated to be 50% of the area's median income (AMI) and the low-income level is calculated to be 80% of AMI.

² The City indicates that the location (i.e., in terms of which floor and orientation) and unit type (i.e., whether studio, one-, or two-bedroom units) for the 20 affordable units has not yet been identified, and instead will be determined at a later date.

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. The portion of the project in the coastal zone is appealable because it is located within 300 feet of the San Lorenzo River.

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. Section 30625(b)(2) of the Coastal Act requires the Commission to conduct the de novo portion of the hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission considers the CDP application ‘de novo’ (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, 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 not located between the nearest public road and the sea and thus this additional finding would not need to be made 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 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’s approval of the CDP for the project violates the applicable LCP (and Coastal Act access) provisions because the project: 1)) does not include enough affordable units; 2) conflicts with the LCP’s Downtown Plan development standards; and 3) leads to adverse coastal resource impacts. See **Exhibit 4** for the appeal contentions.

E. Substantial Issue Determination

1. Substantial Issue Background

The term substantial issue is not defined in the Coastal Act. Rather, the Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603 (Section 30625(b)(2)). And 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, (CCR) Section 13115(b)). CCR Section 13115(c) also 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.

In this case, for the reasons discussed further below, the Commission determines that the appeal regarding the City's approval of a CDP for the project does not present substantial LCP conformance issues.

1. Affordable Housing

The Appellant contends that the project does not provide enough affordable units under the City's affordable housing ordinances, including both the Inclusionary Ordinance and the Density Bonus Ordinance, and that provisions of California's density bonus laws do not supersede requirements of the City of Santa Cruz's LCP and the Coastal Act. Specifically, the Appellant contends that in order to conform to the LCP and the Coastal Act, at a minimum, additional affordable units must be added to the proposed project.

Although not part of the LCP, a basic understanding of the City's Inclusionary and Density Bonus Ordinances is required to analyze this portion of the Appellant's contentions. The City's Inclusionary Ordinance requires mixed-used projects with greater than five residential units to include a certain percentage of the units as "affordable" and/or for that percentage to be offset by in-lieu mitigation fees (directed to the City's affordable housing fund) sufficient to construct that number of units elsewhere.³ The City's Density Bonus Ordinance mimics state density bonus law and provides a variety of incentives (ranging from increasing allowable density to allowing exceptions to applicable development standards) to encourage developers to include affordable housing in their residential projects.

As described above, the City-approved project includes 20 affordable housing units out of the 175 housing units provided overall. The Appellant claims that this is an insufficient number of affordable housing units and that the City's density bonus and inclusionary housing requirements alone would require more than the 20 affordable units to be provided in this case. However, the City's density bonus and inclusionary housing requirements are not a part of the LCP, and thus themselves are not proper grounds for appeal. They are, however, implicated by the LCP's required analysis associated with state density bonus law, and thus their application in that context is applicable.⁴

³ When the application for this project was deemed filed by the City, the applicable percentage was 15%, but when the City took action on the permits for the project, including the CDP, the Ordinance had been updated and the new percentage was (and is currently) 20%.

⁴ And to the Appellant's points, the City-approved project includes 11% affordable units (i.e., 20 units), whereas a 15% affordable unit project at this scale would have 27 units and a 20% affordable unit project would have 35 units.

Specifically, here, because the project does not meet all explicitly identified LCP standards (see findings that follow), the main LCP question becomes one of whether the project qualifies for exceptions via state density bonus law (because the LCP requires such consistency to allow for exceptions to LCP numeric standards pursuant to that law) and whether it adequately protects coastal resources after such exceptions have been applied. A broader and perhaps less obvious question is whether the project adequately encourages affordable housing, as required by both the Coastal Act and the LCP, both when considering LCP exceptions and overall. To the latter question, such analysis boils down to whether 20 affordable units are “enough” to allow for exceptions to be considered consistent with the requirement that affordable housing be encouraged. Put another way, does a housing project that includes 155 market rate units, nearly 90% of all units provided, adequately constitute encouraging affordable housing, especially when it does not meet all LCP standards.⁵

In terms of state density bonus law, there are a number of state provisions that allow for exceptions to be made to otherwise applicable local requirements as a means of facilitating and incentivizing affordable housing (as codified in Government Code Sections 65915 through 65918). Specifically, under state density bonus law, developers are allowed increased density (i.e., more units than would otherwise be allowed under the local requirements) if they provide affordable housing in the projects. In fact, development projects can obtain a density bonus of up to 35% based on the number and type of unit by income category (very low, low, or moderate income) provided in the development.⁶ The law also provides for a sliding scale of incentives, concessions, and waivers (based on the amount and type of affordable housing) to reduce potential development constraints via allowing for exceptions to local requirements. Although the law spells out a very specific way of calculating potential concessions and incentives, and limits them to standards that will have the effect of physically precluding construction of a housing development eligible for a density bonus, the law also provides for unlimited waivers, meaning that a qualifying project can seek exceptions to an unlimited number of local requirements.⁷ In other words, once you have a qualified

⁵ And where meeting such standards essentially describes the “floor” for protecting coastal resources under the LCP, including numerical standards that have been derived and certified by the Commission to allow for the kinds, intensities, and densities of development that can likely be accommodated while still protecting coastal resources. In other words, it can be presumed that the starting place for protecting coastal resources are these LCP requirements, which may need to be adjusted to further circumscribe development to protect coastal resources adequately (e.g., where the maximum allowed height for a particular site is 35 feet but the structure needs to be reduced to 25 feet to protect a public view).

⁶ For example, if a developer provides 5% very-low-income units, they will receive a 20% density bonus, and an additional 2.5% density bonus increase for every 1% increase in very-low-income affordable units, up to a maximum of 35%.

⁷ And on this point it is noted that the original concept inherent in the law of allowing up to three concessions and/or incentives to a project (e.g., allowing an additional 10 feet of height above the otherwise required maximum to accommodate the project), is contradicted by the law’s waiver provisions that allow unlimited exceptions to be applied. In other words, the law is internally inconsistent on this point, and its waiver provisions essentially allow any number of exceptions to local requirements.

project, there is no limit to the number of waivers to otherwise required standards that can be applied.

Importantly, in the coastal zone state density bonus law does not override the Coastal Act and, by extension here, the City's LCP. In fact, these laws explicitly state the opposite,^{8,9} and namely that:

This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

The LCP includes a similar provision. Specifically, LCP Section 24.16.262 states:

1. State density bonus law provides that it shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976.

2. For development within the coastal zone, the requested density bonus and any requested incentive, concession, waiver, modification, modified parking standard, or commercial development bonus shall be consistent with State Density Bonus criteria. All applicable requirements of the certified Santa Cruz local coastal program shall be met (including but not limited to sensitive habitat, agriculture, public viewshed, public recreational access, and open space) with the exception of the numeric standards changed through State Density Bonus provisions.

Thus, the LCP provides a specific means of applying state density bonus law in the City's coastal zone, where certain types of projects that provide qualifying amounts of affordable housing can avail themselves of exceptions to LCP numeric standards (e.g., maximum allowed height, minimum setbacks, etc., as discussed in more detail below) but only where all applicable LCP requirements are met, specifically in terms of coastal resource protection more broadly where, as described earlier, these numeric standards often set the "floor" for the type of development that might be able to be accommodated in a way that adequately protects such resources. In short, both the LCP and state density bonus law essentially provide for the same thing, namely allowing for some lessening of LCP numeric standards if (a) it would be consistent the state density bonus law; and (b) it would be consistent with Coastal Act/LCP coastal resource protection.

With respect to compliance with state density bonus law, the first step is to determine the base density of units that could be accommodated by a fully conforming development. While in some cases that might be a fairly straightforward exercise (e.g.,

⁸ See California Government Code Section 65915(m).

⁹ As also affirmed by the 2016 Second District Court of Appeals *Kalnel Gardens* case.

multiply qualifying acreage by the allowed density), here the LCP does not identify maximum allowable density in this zoning district, and the site includes a series of development standards that also are not straightforward (as discussed in more detail in subsequent findings). Ultimately, the Applicant and the City collaborated on “base plans” that showed that a fully conforming project could support a maximum of 133 residential units given the size of units included in that base plan. Thus, the City concluded that a 133-unit project represents the base density for a fully conforming project in accordance with its process under the Inclusionary Housing and Density Bonus Ordinances.¹⁰

Based on that base density of 133 residential units, the City then determined that that project would be required to include 20 affordable units pursuant to its Inclusionary Ordinance.¹¹ Based on the levels of affordable units requires under the Inclusionary Ordinance,¹² the project was deemed eligible for the maximum allowed 35 percent “density bonus” allowed under state density bonus law, or up to 47 additional units (although ultimately the City and the developer ultimately agreed on accommodating 42 “bonus” units, for a total of 175 units (i.e., $133 + 42 = 175$)). According to the City, state density bonus law indicates that the proposed level of affordability also makes the project eligible for two incentives/concessions, unlimited waivers, and modified parking requirements. In other words, by meeting these state density bonus law requirements, the project can seek exceptions to an unlimited number of local requirements, which, as applicable in the LCP context means potential unlimited exceptions to LCP numerical development standards provided coastal resources are adequately protected.

Thus, to the Appellant’s contention that there aren’t enough affordable units in the project, under the LCP the standard to be met to allow for exceptions to numeric standards to be considered is consistency with the state density bonus law. As indicated above, the City followed that law in establishing the number of required

¹⁰ Where “fully conforming” meant meeting not the base development standards that apply to this site in the LCP’s Downtown Plan, but rather the larger project that would potentially be allowed by exception processes built into the Downtown Plan itself. In other words, the LCP itself provides for potential exceptions (e.g., for allowing larger projects) independent of any density bonus exceptions that might apply, and the City here chose to consider those exceptions being applied as the fully conforming project. Thus, instead of the base LCP standards that allow for a 50-foot tall and 4-story building, the City used a 70-foot tall and 6-story building to identify the fully conforming project. Again, see findings that follow for more detail on this point in relation to LCP requirements.

¹¹ Under state density bonus law, at this step of the analysis the number of required affordable units is established by the City based on requirements in place at the time the application is deemed complete (Government Code Section 65915(a)(3)(D)(ii)). Although the City has since updated their Inclusionary Ordinance to require 20% affordable units in such residential projects, the inclusionary standard in effect at the time the CDP application was filed as complete was 15%, and the City chose to rely on that standard for identifying the required number of affordable units. Thus, here, the City determined that the number of affordable units required is 15% of the total number of units as applied to their defined fully conforming project (133×0.15 equals 20).

¹² Again, as indicated above, the City-approved project makes 15 of the 20 required affordable units available to households at the very-low-income level (50% AMI) and makes the remaining five affordable units available to households at the low-income level (80% AMI).

affordable units, here arriving at 20. Thus, in that sense, the Appellant's affordable housing contention does not raise a substantial issue of LCP conformance. As alluded to above, there remains some question as to whether the project adequately encourages affordable housing, as required by both the Coastal Act and the LCP, including whether some larger number of required affordable units should have been determined when the City undertook that exercise as described above. To that point, ultimately, nearly 90% of all units provided in the project would be market rate units. And, to accommodate all of those units, the project requires exceptions to a number of LCP standards. However, as described in the findings that follow, in this case the degree of LCP inconsistency is fairly limited and that inconsistency does not result in a significantly different and larger project than one that would otherwise be LCP consistent. And housing units in the urban downtown area (and away from prime visitor-serving and recreational areas nearest the shoreline) near services that can promote walkability and vibrancy are themselves something that helps meet LCP housing objectives in any case, including the 20 affordable units. Thus, and as applied to the facts of this case, the City adequately encouraged the provision of affordable housing through its action, and it does not raise a substantial LCP conformance issue.

More broadly, though, the Appellant also raises a general point regarding how the City's affordable housing requirements *should* relate to state density bonus law, and specifically identifies that the City's affordable housing requirements would require between 27 (15%) and 35 (20%) of the 175 units to be affordable units,¹³ even *before* applying state density bonus law provisions, and further contends that it does not make sense that such provisions would actually serve to reduce the required amount of affordable housing at this location. In other words, without applying state density bonus law to this application, and simply applying the City's own affordable housing requirements, the City would have required more units than are required through application of state law (whether 25% more units applying the 15% standard over 40% more units applying the 20% standard). The Appellant further questions how is it possible that a law intended to facilitate and incentivize affordable housing actually results in *less* affordable housing. These are good questions, and probably good questions for the State Legislature to grapple with. And in fact, when the project was before the City Planning Commission, a majority of Commissioners agreed that the City has the authority to require additional affordable units, including because the City's inclusionary requirements were adopted by a vote of the people and have been in effect since 1980, well before state density bonus law provisions were adopted. Ultimately, the City Council did not require more affordable units when it approved the project, citing to jurisprudence in support of that decision.¹⁴ The City did, however,

¹³ Again, bracketing state density bonus law, when the application for this project was deemed filed by the City, the applicable percentage was 15% (or 27 units out of 175 units would need to be affordable and/or accounted for by in lieu mitigation fees), and when the City took action on the permits for the project the percentage was 20% (or 35 units).

¹⁴ In 2013, the California Court of Appeal in *Latinos Unidos del Valle De Napa y Solano v. County of Napa* (2013) 217 Cal.App.4th 1160 held that state density bonus law does not allow a city or county to use its inclusionary ordinance to increase the minimum number of affordable units over that called for by that law in order to qualify a housing project for a density bonus (including incentives, concessions, and waivers applicable thereto). In doing so, the court invalidated a section of the Napa County density bonus

require the Applicant to contribute at least \$400,000 and up to \$500,000 (where the final amount is dependent on specific triggers) to the City's Affordable Housing Trust Fund to help facilitate additional affordable housing in the City.

2. LCP Downtown Plan Compliance

The LCP's Downtown Plan (Plan) includes detailed development standards specific to this location (e.g., for maximum allowed height, minimum required setbacks, required articulation, etc.) (see pages 58-64 of **Exhibit 5**, Front Street/Riverfront Corridor Development Standards and Design Guidelines). The Plan also acknowledges that in some cases there may be appropriate reasons to allow for exceptions to deviate from those standards if such exceptions are consistent with the principles and objectives of the Plan. For example, as a general matter, the Plan provides that (see **Exhibit 5** page 83):

Design Variation. The Downtown Plan contains development standards, which when implemented, are intended to achieve the First Principles of the Plan and public objectives for the downtown. While every effort has been made to thoughtfully produce clear and concise standards for the community, the Plan can never address or respond to all development scenarios and circumstances. Therefore, projects that closely conform to the development standards, but with slight variations, may be considered upon demonstration that the resulting project will better achieve stated Plan and community objectives. Such variations shall be minor in nature and must receive a positive recommendation from the Planning Director, with final approval by the City Council.

The LCP also includes more specific exception criteria, subject to the project meeting certain tests and the City making certain findings (as discussed below). In other words, while the Plan at first glance includes clear and specific mass, scale, and design requirements applicable to this project, it also upon more thorough reading allows for exceptions to nearly all of those standards both broadly, as well as upon meeting specific criteria. In addition, as discussed above, the LCP allows for exceptions more broadly to numeric LCP standards if the project meets state density bonus law requirements (which it appears to, as described in the preceding finding), and where application of such exceptions is consistent with coastal resource protection requirements of the LCP otherwise (see, LCP Section 24.16.262 cited above).

Height/Stories

The maximum allowed height at this location is 50 feet and the maximum allowed number of stories is four (i.e., up to three stories are allowed above a ground-floor

ordinance that stated "These density bonus units will be provided, at the request of the applicant, when that applicant provides target units **in addition to** the affordable units required by [Napa 20% inclusionary ordinance] Section 18.107.080" (emphasis added). The court held that the Napa ordinance was inconsistent with state density bonus law and therefore invalid, reasoning that "...allowing the County to increase the number of affordable units required for a density bonus would conflict with subdivision (f) of section 65915, which bases the amount of density bonus on the percentage of affordable housing units in the project."

commercial story) (see **Exhibit 5**, p. 58). This is the base “fully conforming” 133-unit mixed-use project identified by the City in its application of state density bonus requirements, as discussed earlier. However, the entire site is also located in “Additional Height Zone B,” which allows for an increase in the maximum allowed height to 70 feet and the maximum allowed number of stories to six (i.e., up to five stories are allowed above a ground-floor commercial story) if certain conditions are met under a two part test. First, the project must meet specified criteria, and second, specific findings must be made (see **Exhibit 5** pages 77-78). With respect to the first part of the test, an exception to allow for more height and stories is allowed if any of the following conditions are met:

- The aggregate parcel size is greater than 15,000 square feet
- The frontage along Front Street is greater than 100 feet
- The parcel is located between adjacent structures of three or more floors in height
- The project qualifies for a density bonus as allowed under either state law or a City-adopted density bonus ordinance

In this case, the City found that three of these criteria were met and that the project was eligible for an exception to allow an increase in height and stories because the aggregate parcel size is greater than 15,000 square feet (i.e., it’s over 45,000 square feet), the frontage on Front Street is greater than 100 feet (i.e., it’s 423 feet), and the project is eligible for both state and LCP density bonuses. As only one criteria need be met, the City thus correctly determined that the project is eligible for the increased height and number of stories.

The second part of the test requires the City to determine that the project is consistent with each of the following objectives:

- The additional height will help to achieve the “first principles” of the Downtown Plan (e.g., in terms of form, scale, housing, accessibility, and open space)
- The additional height will contribute to an improved social and economic environment by including a concentration of new housing
- The form of the development promotes the appearance of a grouping of buildings rather than large monolithic building masses
- The development receiving additional height will physically and/or financially contribute its fair share (through an improvement district, development agreement or similar mechanisms) to the implementation of internal pedestrian connections between Front Street and the Riverwalk
- The additional height will help to meaningfully achieve one or more of the following key community objectives, including but not limited to: providing affordable housing, providing day care centers, exceeding green building minimum standards, providing incubator space for small businesses, including public access easements, accommodating public right-of-way improvements and/or publicly accessible open

space, and including structured or shared parking and transportation demand management provisions

- Clear demonstration of the public benefit relating to two principal objectives: namely high quality public access between Front Street and the river, and the appropriate treatment of the riverfront edge along the Riverwalk

The City determined that the project was consistent with each of the objectives in that: 1) the additional height allows for additional housing units to be provided downtown, one of the ‘first principals’ of the Downtown Plan, including concentrating housing adjacent to transit (the site is across the street from the downtown metro hub); 2) the project includes three separate buildings to promote the appearance of a grouping of buildings rather than one monolithic building; 3) the project includes two pedestrian passageways to provide high-quality access between the downtown commercial core and Front Street to the Riverwalk; and 4) the project would help achieve key community objectives, including the addition of publicly-accessible open space adjacent to the Riverwalk, affordable housing, a variety of different-sized commercial spaces that can provide incubator space for small businesses, and a commitment to transportation demand management concepts. Although these are all more subjective than objective standards, it appears clear that the City rightfully drew such conclusions here. Thus, the LCP allows for exceptions to increase the allowed maximum height and number of stories to 70 feet and six stories (i.e., five stories above the ground-floor commercial), and an LCP consistent project of this type could be up to 70 feet tall and include up to 6 stories.

Here, the City-approved project is 80 feet tall, and includes 7 stories, and thus it is not consistent with these maximum height and story requirements (i.e., it is 10 feet taller and one story more than is allowed under the LCP), and these are not the type of ‘minor variations’ that the Downtown Plan otherwise allows.

Upper Floor Stepbacks

The Downtown Plan states:

*In order to promote a pedestrian scale, to increase light to the street, and to reduce overall building mass and scale, development above 50 feet in height shall be required to step back from the Front Street facade a minimum of 10 feet. At least 50% of building frontage along Front Street and Soquel Avenue shall step back 10 feet above the height of 50 feet. Buildings adjacent to River Street, east-west streets, and publicly accessible passageways shall step back at least 10 feet from the street for any height above 35 feet. (See **Exhibit 5** pp. 58-59)*

Here, the coastal zone buildings front on Front Street and are adjacent to the public passageways. Thus, the LCP also requires that the building elements above 35 feet be ‘stepped back’¹⁵ at least 10 feet from the street along the Front Street frontage, and that

¹⁵ Stepbacks refer to where upper stories are smaller, or “stepped back,” from lower stories, and are intended to increase air space between adjoining upper building elements, to provide less upper floor

at least half of the building elements above the 50-foot level be stepped back an additional 10 feet. Here, the project is not stepped back an additional 10 feet for 50% of the Front Street frontage otherwise, and thus doesn't meet this LCP test. These too are not minor variations. In fact, applying them to the 80-foot tall buildings would significantly reduce their scale as relates to the Front Street frontage, a reduction of nearly 20,000 square feet.¹⁶

The LCP also includes specific setback provisions applicable to this site. Here, the LCP does that both in terms of requiring a smaller square footage for the top floor, and also by requiring that the top floor be shorter in length along Front Street or the Riverwalk, which both work together to limit the top floor's size. With respect to top floors, the LCP states (**Exhibit 5** page 79):

To promote skyline variation, the top floor of the building shall not exceed 60 percent of the floor area below or 60 percent of the building length as measured along Front Street or the Riverwalk.

However, the Downtown Plan further provides that:

Variation to the 60% floor area standard can be considered for projects that incorporate publicly accessible pedestrian connections to the Riverwalk.

In other words, if a project includes public pedestrian connections to the Riverwalk, and this project includes two such connections, then the LCP allows for variations to the 60 percent floor area and building length standards to be considered. Here, for the buildings in the coastal zone, the City indicates that the square footage of the top floors would be roughly 80 percent of that of the floors below it and roughly 90 percent of their length.¹⁷ These too are not minor changes. And, in fact, the City's calculations do not account for the required Front Street setback above 50 feet that is required for each building. As a result, these top floors are even larger than might otherwise be allowed by the LCP than the 80% and 90% cited by the City. Although the LCP text does not actually qualify what amount of variation to the 60% standard is allowable, arguably the variation intended by the LCP was to be minor.¹⁸ Thus, the buildings are considerably larger along the Front Street frontage and on the top floors than the LCP allows.

massing along the public street that might 'loom over' the public there, and to help increase building articulation, all of which is also intended to help diminish perceived massing of the buildings.

¹⁶ As applied to the 423 feet of Front Street frontage associated with the project, that means that at least 211.5 feet of the frontage would have to be stepped back 10 feet above the 50-foot level, which means each of the City-approved buildings upper three floors would lose 2,115 square feet, which means a loss of 6,345 square feet per building, or a total reduction of 19,035 square feet.

¹⁷ For the building that straddles the coastal zone, the City indicates that the top floor would be 81.5 percent of the floor below and 88 percent of the building's length, and for the other building that is completely in the coastal zone the top floor would be 81 percent of the floor below and 92.8 percent of the building length..

¹⁸ And, to this point, the Downtown Plan's design variation standard cited above states: "...Such variations shall be minor in nature..."

Elm Street Pedestrian Connection

The Downtown Plan requires that the southernmost pedestrian passageway at the site be located a maximum distance of 50 feet from the extension of Elm Street (see **Exhibit 5** page 50), whereas the City-approved passageway is located approximately 80 feet from the extension of Elm Street in the City-approved project. As indicated above, minor design variations are explicitly allowed under the Downtown Plan. Here, the City determined that the location of the southernmost passageway is favorable to the design because it more effectively breaks up the building mass into three separate buildings, and that if the passageway was relocated 30 feet to the south to the location required in the Downtown Plan, the building mass would be shifted to the center building. This would create a larger building mass along Front Street and a much narrower building south of the passageway with little-to-no room for ground-floor commercial space, given the location of the driveway to the parking garage. The City also determined that the proposed design results in a more desirable balance of the sizes of the buildings and allows for the ground level of all three buildings to include sufficient ground-floor commercial spaces. This change appears to be the type of ‘minor’ deviation intended in the Downtown Plan, and one that is supported by the City’s reasoning. For these same reasons as articulated above, this exception can be found consistent with the LCP.

Parking Requirements

The Downtown Plan parking district requires one parking space per residential bedroom (provided on site or via payment of an in-lieu fee).¹⁹ Here, the project proposes 142 residential parking spaces, whereas 208 are required by the LCP. This represents an over 30% reduction in required parking. And although some of this can be attributed to being located across the street from the City’s main transit hub, this too is not a ‘minor’ deviation.

Conclusion

In sum, the project is inconsistent with the LCP, including when the LCP exception criteria built into the Downtown Plan is applied as follows:

- The project is 80 feet tall with 7 stories, and thus is 10 feet taller and one story more than is allowed under the LCP
- The project is not stepped back an additional 10 feet for 50% of the Front Street frontage otherwise, leading to nearly 20,000 square feet more building space than allowed under the LCP
- The project does not meet the 60% top floor square footage and linear length requirements, which when coupled with the Front Street frontage issue, leads to significantly larger top floors than allowed under the LCP
- The project provides nearly a third less parking than is required by the LCP

¹⁹ The commercial parking standards were not augmented by the Density Bonus Ordinance and appear consistent with normal parking requirements.

Normally, that means that the project cannot be approved consistent with the LCP in this form. However, as discussed above, the LCP allows for certain numeric exceptions when affordable housing is provided consistent with state density bonus law and if coastal resources are otherwise adequately protected. Although there are some questions about the way these laws were applied in this case (including in terms of the number of required affordable units and why the number of total units here cannot be accommodated in an LCP-consistent form, as described above), the City has made a credible argument that state density bonus law was appropriately applied here. Thus, the applicable coastal resource protection question boils down to whether the above numeric deviations from LCP standard to provide a larger project adequately protect coastal resources otherwise as required by the LCP. And at this location in urban downtown Santa Cruz, that question primarily regards how the project affects public views, public access along the river, and the river itself.

In analyzing this question, the standard presumption is that the numerical standards in the LCP establish the presumed “floor” for protecting coastal resources, anything beyond which would negatively impact coastal resources. Thus, the burden is on the applicant to show how exceptions to such standards do not impact coastal resources. In some cases, such impacts can be reasonably measured and concluded on, for example a geological hazard setback supported by a geologic study or a riparian setback supported by a biological assessment. In such cases, it can be fairly straight-forward for the Commission to determine whether a deviation from the established standards would or would not negatively impact coastal resources.

However, in other cases, the relative impacts from exceptions to LCP standards might be more subjective, such as when they may result in visual and/or aesthetic impacts. In some cases, it might be clear that exceeding a certain building height will completely cut off an important coastal view, and thus the deviation should not be permitted. However, in other such cases, such as this project, it is more of a subjective decision as to whether application of the exceptions would impermissibly impact certain coastal resources. In such cases, numeric and more objective standards become a critical tool for considering such impacts. And, given the nature of the Downtown Plan and its objectives, it is also appropriate to consider the public benefits provided by a project as a result of the LCP exceptions (e.g., more affordable units, greater public access amenities, etc.) when balancing against the potential coastal resource impacts from such exceptions.

In this case, an argument can be made that the City-approved project does not meet the certified LCP’s requirements that establish allowable mass, scale, and bulk intended to protect public views, and thus a more subjective analysis of the impact of the project on public views is unnecessary. In other words, the LCP established the maximum amount of public view impact allowed to protect such views, and anything beyond that, as here, leads to impermissible public view impacts. Indeed, the very purpose of the various numeric height, bulk, and setback standards was to prevent a wall between the Riverwalk and the City’s downtown core, and to further break up the bulk and massing of the buildings in public views. That said, in this case the LCP exceptions accrue

mostly to exceptions allowed by the Downtown Plan itself, although the exceptions that the City applied beyond that are not minor, as discussed above.

Here, however, and in large measure due to the location of this project away from the immediate shoreline and away from prime visitor serving shoreline access destinations, the primary issue is whether the additional mass, scale, and bulk above what would normally be allowed by the LCP's numeric standards adequately protects public views, public access, and the River itself. While reasonable people can – and often do – disagree about the effect of a project such as this on public views, here the project is located in downtown Santa Cruz, and visual simulations show that the increase above LCP standards does not appreciably alter the public view impacts (see **Exhibit 7**).

In addition, these coastal resource issues were analyzed in detail during the Commission's review of the City's Downtown Plan LCP amendment (LCP-3-STC-17-0073-2 Part A), which generally encourages new development within the existing City center and enacts more explicit requirements for the provision of public access and recreational opportunities between downtown and currently underutilized bicycle and pedestrian Riverwalk that fronts the San Lorenzo River and provides direct access to the prime visitor destinations in the City associated with the Santa Cruz Boardwalk and the City's Main Beach area. In that amendment, the Commission found that:

The amendment includes specific policies for new development along the riverfront, including requirements to create as much as 42,500 square feet of public space along the river, as well as requirements for connections between the river and public streets. The end result should be a vastly improved public space in the downtown area. The proposed amendment also allows both commercial visitor-serving and residential uses along the riverfront. ... Increased building heights along the riverfront will alter views in the downtown area, but other LCP policies ensure that new construction will be visually consistent with surrounding development, and the location of the downtown relative to the coastline precludes impacts to views of scenic coastal areas, so the visual impact of increased building heights along the riverfront is not significant. Overall, the proposed LCP amendment concentrates needed development in an appropriate place. It leverages the ability to build larger structures for design features that provide and enhance opportunities for public access and coastal recreation while avoiding significant adverse impacts to coastal resources.

As to the river and public access, an important objective of the LCP's Downtown Plan is to better orient downtown development to the river, both to enliven public access along the river levee pathways (i.e., the Riverwalk) and to have the river itself become a more connected part of the downtown experience, including to help foster better river enhancement. Here, the project includes new ground-floor visitor-serving commercial spaces, as well as new physical space to accommodate public plazas and enhanced public access on the river side (by filling the area between the buildings and the levee to create more useable space). These components should significantly improve public access in this area and help to foster additional projects to do the same as they come forward (i.e., this is the first such project approved under the Downtown Plan).

Furthermore, the \$50,000 contribution to help enhance the river corridor itself also addresses these public access and river enhancement needs.

In sum, the City exercised the discretion allowed to it under the LCP for a series of exceptions to certain LCP mass and bulk standards, but those exceptions were also allowed for by the LCP explicitly. In other words, the City did not choose to simply disregard LCP standards and to allow for different standards than the LCP maximums and minimums, rather it is the LCP *itself* that articulates a process for exceptions, both within the Downtown Plan itself as well as in terms of exceptions to certain numerical standards for projects that include affordable housing. In other words, the LCP's Downtown Plan explicitly allows for almost all of the exceptions applied in this case subject to certain criteria, and the remainder of exceptions applied above/below those maximums/minimums thus established while major, don't result in any significant coastal resource impacts as compared to the outcome explicitly allowed under the LCP, which is allowed for cases where affordable housing is provided (see also below). Although the LCP's Downtown Plan includes more subjective than objective criteria in its exception process, making evaluation of the City's action more difficult in that regard, the City supported its action with appropriate facts and evidence in this case. For these reasons, the City's approval of a CDP for the proposed project does not raise a substantial issue of LCP conformance with respect to Downtown Plan provisions.

3. 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).²⁰ And again, 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, these five factors, considered together, support a conclusion that the City's approval of a CDP for this project does not raise a substantial issue of LCP conformance. First, in terms of legal and factual support supporting the City's decision, the City made detailed findings to support all of the decisions challenged by the Appellant with respect to LCP consistency in the form of its calculation of the "base plan" density for the project site, in its application of the exceedance provisions contained in the Downtown Plan, and its application of the density bonus law and the attendant LCP provision. While reasonable minds may differ on those findings, there is adequate factual and legal support for the County's decision and the first factor weighs toward finding no substantial issue.

Turning to the second factor, at first glance, the extent and scope of the proposed project is fairly large. But given its context in the City's developed downtown urban core,

²⁰ See CCR Section 13115(c).

the extent and scope of the proposed project is not significantly divergent from other development in the area. This factor slightly favors a finding of substantial issue.

With respect to the third factor, due to the context of the project described above, the significance of the coastal resources while important, are adequately protected under the City's action. This factor weighs against a finding of substantial issue.

Turning to the fourth factor (i.e., the precedential value of the local government's decision for future interpretation of the LCP), this decision is limited to the specific facts and details of this case because of the site-specificity of the Downtown Plan. Although it implicates the larger question of how to apply density bonus law in the Coastal Zone, that question is a relatively minor one in the context of this project due to the exception provisions contained in the site-specific Downtown Plan, and the project's location away from the prime visitor destinations along the City's immediate shoreline. Therefore, this factor weighs largely in favor of a finding of no substantial issue.

Turning to the fifth factor, and whether this appeal raises only local issues or those of regional statewide significance, the analysis is similar to the fourth factor. Much of the relevant analysis is around the interpretation of the site-specific Downtown Plan. How this Plan is interpreted raises local issues. As discussed above, although there remain some questions around the density bonus law that are of statewide significance, they are not integral to this appeal. This factor also weighs in a finding of no substantial issue.

Thus, the City's approval of a CDP for the proposed project does not raise a substantial LCP or Coastal Act conformance issue. For the reasons stated above, the Commission finds that Appeal Number A-3-STC-21-0013 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.

4. Appendices

A. Substantive File Documents²¹

- City of Santa Cruz CDP Permit File CP18-0153
- Final Environmental Impact Report, Riverfront Project, City of Santa Cruz (July 2020)

B. Staff Contacts with Agencies and Groups

- City of Santa Cruz

²¹ These documents are available for review from the Commission's Central Coast District office.