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# Th17a

Appeal Filed: 5/20/2021  
Action Deadline: Waived  
Staff: Esme Wahl - SC  
Staff Report: 7/23/2021  
Hearing Date: 8/12/2021

## STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION ONLY

**Appeal Number:** A-3-PSB-21-0032

**Applicant:** City of Pismo Beach

**Appellants:** Steven Ball; Diane Farley; Michael and Debra LaTourette; Brahm Levin; Pam Roberts; Joanne Schultz; and Kathryn Smalarz

**Local Government:** City of Pismo Beach

**Local Decision:** Amendment to the existing Conditional Use Permit/Coastal Development Permit for events at the Chapman Estate (Project No. P20-000069)

**Location:** The Chapman Estate, located on the blufftop at 1243 Ocean Boulevard (APNs 010-302-012 and -013) in the Shell Beach area of the City of Pismo Beach.

**Project Description:** Expand use of the Chapman Estate as a cultural center by increasing the number of events (while also decreasing the number of larger events), adding recreational and educational classes, opening indoor use of the main building on the Estate, and other related operational changes.

**Staff Recommendation:** No Substantial Issue

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### IMPORTANT HEARING PROCEDURAL NOTE

Please note that this is a substantial issue only hearing, and testimony will be taken *only* on the question of whether the appeal raises a substantial issue. Such testimony is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits), so please plan your testimony accordingly.

Only the Applicant, persons who opposed the application before the local government, 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 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

The City of Pismo Beach approved a coastal development permit (CDP) amendment to increase the number/type of, and modify requirements associated with, event use at the Chapman Estate (the "Estate"), which is located on the blufftop at 1243 Ocean Boulevard in the Shell Beach area of Pismo Beach. The Chapman Estate is a large historical home and sprawling grounds that was gifted to the City in 2014 by the prior owner, Clifford Chapman, for use as a City event and cultural center, and it has been the site of numerous such events and City use since that time. The City-approved project would expand use of the Chapman Estate as a cultural center by increasing the number of events (while also decreasing the number of larger events, and eliminating larger private events), adding recreational and educational classes, and opening indoor event use of the main building on the Estate. The project also includes a series of related operational changes to limit any expected impacts from such events.

The Appellants primarily contend that the approved project is inconsistent with City of Pismo Beach Local Coastal Program (LCP) provisions related to coastal access, parking, neighborhood character, and noticing requirements. After reviewing the local record, Commission staff has concluded that the City's CDP action on the approved project does not raise a substantial issue with respect to the project's conformance with the City of Pismo Beach LCP or the Coastal Act's public access provisions.

In terms of coastal access and parking, the proposed amendment should not inhibit coastal access since there is adequate on-street parking in the area to serve both coastal visitors and smaller events (and events with 50 or more attendees would be required to park remotely and use a shuttle to and from the Estate), and the parking in both cases is associated with public use of public parking for public purposes as a general rule (and not some other type of privatization of the public right of way for private residential or other lower Coastal Act and LCP priorities). As to neighborhood character, the Estate appears as it always has (i.e., as a large home with extensive grounds), and a cultural center is an allowed use within the single-family residential zone with a conditional use permit (which permit was previously granted by the City to cover such use and ongoing events, and which is being amended in this action). And the City's approval requires that events at the Estate be completed by 8pm at the latest, and that they not exceed allowed noise parameters for residential zoning districts. All of these requirements help to ensure neighborhood compatibility. In addition, the approved project will actually reduce the number of allowed larger events (and eliminates larger

private events), and it includes the addition of community-centered classes, discounts for Pismo Beach residents, and increased public access to the Estate grounds overall, which will help increase public access and help decrease potential impacts. Finally, in terms of noticing, the City has provided evidence that it complied with the LCP's noticing requirements. Considering these facts, staff does not believe that the project raises a substantial issue of LCP or Coastal Act conformance.

As a result, staff recommends that the Commission determine that the appeal contentions do not raise a substantial issue of conformance with the LCP and the Coastal Act's public access policies, and that the Commission decline to take jurisdiction over the CDP application for this project. The single motion necessary to implement this recommendation is found on page 5 below.

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**EXHIBITS**

- Exhibit 1 – Project Site Maps
- Exhibit 2 – Project Site Images
- Exhibit 3 – Events Table (Existing and Approved Events)
- Exhibit 4 – City’s Resolution and Staff Report (excerpts from Final Local Action Notice)
- Exhibit 5 – Coastal Access Map
- Exhibit 6 – Appeals of City’s CDP Decision

## 1. MOTION AND RESOLUTION

Staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeals were 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-PSB-21-0032 **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-PSB-21-0032 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 Background

The City-approved project is located on City-owned land at 1243 Ocean Boulevard in the Shell Beach area of Pismo Beach. The project is located at the Chapman Estate (the "Estate"), which is a large and manicured property with striking historical architecture, ocean views, and expansive grounds on the blufftop seaward of Ocean Boulevard. The Estate is located in the R-1 (Single-Family Residential) zoning district.

From 1962 to 2012, the Chapman Estate was the residence of Clifford Chapman. During this time, Mr. Chapman was well known for hosting a variety of community gatherings, events, and fundraisers, and he very much wanted the spirit of those endeavors to continue after his passing, and for them to be a community asset. Following Mr. Chapman's death, ownership of the Estate was transferred to the City of Pismo Beach in early 2014 with requirements that the City hold the four annual fundraisers that Mr. Chapman previously held and that the Estate be used more broadly as a cultural center, a community gathering place, and for the enjoyment of the general public. Upon acquiring the Estate, the City obtained a Conditional Use Permit (CUP)<sup>1</sup> to operate the Estate and to hold events, including the four required fundraisers annually (which were actually a continuation of similar events that Mr. Chapman had held four

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<sup>1</sup> A CUP operates as a CDP in the City of Pismo Beach.

times annually before his passing). Since 2014, the City has approved two CDP amendments to the original CUP, with each amendment modifying and expanding the types of events allowed. Under the current authorization, 18 events per year are allowed to take place on the Estate between April and October (where these events include gatherings, free community events, private events, and the four required fundraisers annually), and the site will operate an expanded “Open Gates” program that will allow the general public to access the Estate grounds for a walk, a picnic, or a docent-led tour.<sup>2</sup>

## **B. Project Description**

The City-approved project amends the existing underlying CDP to allow for: 1) an extended season of operation; 2) an increased number of events (but fewer larger events); 3) indoor use of the main building on the Estate, and 4) other related operational changes. In terms of the operating season, currently events and Estate use are limited to between April and October inclusive annually, and this would generally be extended to year-round use under the approval (except that the Open Gates program would remain operating within the current season but with expanded hours, Monday through Thursday from 11am to 2pm).<sup>3</sup>

As to the events themselves, the types of events offered and the number of events per year would increase. New event types are recreational classes, such as yoga classes (two classes per week) and educational programs (one per month). Private events would be expanded from an allowed five per season to seventy-two per year; however, the maximum size of private events would be reduced from an existing maximum of 250 attendees to between 25 and 50 attendees. The number of “neighborhood gatherings” (which allow at most 100 attendees at each gathering), which are free events put on by the City for neighborhood residents, and have previously included Christmas Tree Lightings and 4<sup>th</sup> of July celebrations, would be increased from three per year to six per year. There will be no changes made to the four annual fundraisers. In total, the number of events would increase from the currently allowed maximum of 18 events between April and October to 204 events per calendar year, but the number of allowed large events would decrease from a maximum of 12 per year (five of which could be for private purposes) to a maximum of ten per year (all of which would be for public purposes).<sup>4</sup> For fundraisers and private events of 50 attendees or more, the event host

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<sup>2</sup> The City’s Open Gates program includes a charge of \$5 a day (individual), \$25 a season (individual), or \$50 a season (family), and docent-led tours are offered for an additional \$5 per person.

<sup>3</sup> Currently, Open Gates operates on Tuesdays and Thursdays between 11am and 1pm, April through October, and is referred to as “lunches” in the current event table.

<sup>4</sup> Currently, large events are allowed for the four fundraisers and up to five private events (one fundraiser of 450 people, three fundraisers of 300 people, and private events of up to 250 people) and up to three neighborhood events (up to 100 people) for a total of 12 such events annually. As modified, the same fundraisers would be allowed, and the same neighborhood events would be allowed but increased to up to six times per year. All private events would be limited to 50 people or less, for a maximum of ten such larger events annually, all of which would be for public purposes.

is required to provide a shuttle service to transport attendees from an off-site parking lot (i.e., City Hall and/or Shell Beach Elementary School) to the Estate.<sup>5</sup>

Finally, indoor use of the main building on the Estate would be allowed via docent-led tours, small private events with a maximum of 25 attendees, and for educational programs. Operational changes include discounts for access to the Estate for Pismo Beach residents, penalty fees for event hosts who fail to follow the off-site parking requirements (when applicable), and the ability to hold two events per day when appropriate.

See **Exhibit 1** for a location map; see **Exhibit 2** for photographs of the site; and see **Exhibit 3** for the existing and updated (via the City's CDP action) event tables.

### **C. City of Pismo Beach CDP Approval**

On April 20, 2021, the City of Pismo Beach City Council approved a CDP amendment to modify event-related use at the Chapman Estate (Project No. P20-000069). The City's Final Local CDP Action Notice (see **Exhibit 4**) was received in the Coastal Commission's Central Coast District Office on May 6, 2021, and the Coastal Commission's ten-working-day appeal period for this action began on May 7, 2021 and concluded at 5pm on May 20, 2021. Seven valid appeals (discussed below) were received during the appeal period.<sup>6</sup>

### **D. Appeal Procedures**

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

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<sup>5</sup> Neighborhood gatherings are the only events of 50 attendees or more that would not be subject to the off-site parking and shuttle requirements because these events are for neighborhood residents only and the majority of attendees are expected to walk to the Estate. For neighborhood gatherings, 15 parking passes would be provided for parking on the west side of Ocean Boulevard near the Estate for event vendors and those with disabilities.

<sup>6</sup> One additional appeal was received that was invalid because the appellant did not participate in the local decision-making process.

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

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

The Coastal Act and the Commission's implementing regulations are structured such that there is a presumption of a substantial issue when the Commission acts on this question, and the Commission generally considers a number of factors in making that determination.<sup>7</sup> At this stage, the Commission may only consider issues brought up by the appeal. At the substantial issue hearing, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no such hearing is requested, a substantial issue is automatically found. In both cases, when the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

If, following testimony and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the local government's CDP decision stands. However, if the Commission finds a substantial

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<sup>7</sup> The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (California Code of Regulations, Title 14, (CCR) Section 13115(b)). CCR Section 13115(c) provides, along with past Commission practice, that the Commission may consider the following five factors when determining if a local action raises a significant issue: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and the Coastal Act's public access provisions; (2) the extent and scope of the development; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

issue, the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal.

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

### **E. Summary of Appeal Contentions**

The Appellants contend that the City's approval of a CDP amendment for the project raises LCP consistency questions broadly related to coastal access, parking, neighborhood compatibility, and improper noticing procedures. Specifically, the Appellants contend that the approved project would violate applicable LCP provisions because: 1) the project will result in increased use of on-street parking and traffic in the neighborhood, with resultant impacts to the neighborhood and to coastal access; 2) the project does not provide on-site parking as required by the LCP; 3) cultural centers are not an allowed use in the R-1 zoning district; 4) event related noise will not be compatible with the neighborhood and will exceed the noise levels allowed by the LCP; and 5) notice and hearing procedures were inconsistent with the LCP's CDP application procedures. See full appeal contentions in **Exhibit 6**.

### **F. Substantial Issue Determination**

#### **1. Coastal Access and Parking**

##### ***Applicable Coastal Act and LCP Provisions***

Because the project is located between the sea and the first public road, the Coastal Act's public access and recreation policies apply as a standard of review. These policies prioritize visitor-serving and recreational uses over other types of development, particularly uses that provide lower-cost opportunities, and also provide for the management of access areas so as to protect the privacy of adjacent property owners and require that parking be provided in a manner that mitigates overcrowding of any particular area, including:

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

***Section 30211:*** *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but*

*not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

**Section 30212.5:** *Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

**Section 30213:** *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where possible, provided. Developments providing public recreational opportunities are preferred. ...*

**Section 30214:** *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances of each case, including, but not limited to, the following: ... (2) The capacity of the site to sustain use and at what level of intensity. (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses. (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter. ...*

**Section 30221:** *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

**Section 30222:** *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

**Section 30223:** *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

The LCP's Land Use Plan (LUP) also includes a series of policies that further protect existing public recreational access and requires new development to provide maximum public recreational access:

**Parks, Recreation and Access Element Principle 21:** *The preservation and development of parks, recreation programs and coastal access facilities are considered vital to:*

- a. Making the city an enjoyable and beautiful place to live, work, play and visit.*
- b. Providing park and recreation amenities for residents and visitors.*
- c. Maintaining a balanced healthy environment and quality of life for residents and visitors.*
- d. Supporting the area's economy.*

**Public Shoreline Access Principle 22:** *The continued development and maintenance of public access to the Pismo Beach coastline shall be considered an integral and critical part of the city's parks and recreation program.*

The goals of Pismo Beach's parking and circulation element are also provided in the City's LUP and Implementation Plan (IP) and seek to balance a high quality of life with economic vitality while considering the needs of visitor, local, pedestrian and bicycle traffic and parking. To reach these goals, the LCP includes specific off-street parking and loading requirements:

**LUP Balanced Transportation Principle 1d:** *Some street parking and traffic for regional daily visitors is accepted within the known constraints that the demand for beach parking may often exceed the supply when the weather and beach conditions are attractive. Within this context, however, the volume and regularity of parking and traffic intrusions in the residential areas should be minimized where practical.*

**Implementation Plan (IP) Section 17.108.010:** *Off-Street Parking and Loading Requirements: At the time any main building or structure is erected, enlarged or increased in capacity, there shall be provided either on the same site or some reasonably and conveniently located site, adequate parking, loading, turning and maneuvering space to accommodate substantially such needs as are generated by the use.*

**Implementation Plan (IP) Section 17.108.020:** *Minimum Off-Street Parking Requirements: Minimum off-street parking requirements shall be as follows: ... O. Public, or Quasi Public Facilities. One space per employee; plus one space per four hundred square feet of gross floor area.*

### **Analysis**

The Appellants contend that: 1) coastal access will be adversely affected due to increased traffic and loss of public parking on Ocean Boulevard; 2) the off-street parking requirements of IP Section 17.108.010 and 17.108.020 are not met; and 3) a parking analysis should be required for the project (see full appeal contentions in **Exhibit 6**).

As described earlier, the Chapman Estate is located on Ocean Boulevard in Shell Beach. Ocean Boulevard runs uninterrupted from Vista Del Mar on the north end of Shell Beach to Placentia Avenue in the southern end of Shell Beach. Within this half-mile stretch of Ocean Boulevard where the Chapman Estate is located, there are two staircases providing direct beach access and one linear shoreline park just upcoast (Eldwayen Ocean Park). The Appellants contend that the approved project's increased event use at the Chapman Estate will adversely impact public access parking for visitors who wish to use these coastal access points. See **Exhibit 5** for a map showing coastal access points in the vicinity of the Chapman Estate.

The Chapman Estate is not equipped to provide onsite parking for events, and thus parking needs for all events is accommodated offsite. For events of 50 people or more,

event organizers are required to provide an off-site parking area and a shuttle to and from the Estate (although some parking passes may be allowed for event vendors during the four large fundraisers). For events under 50 people, event attendees either park in the area and walk to the Estate or walk to the Estate from their homes.

The City estimates that there are 164 public parking spaces on Ocean Boulevard between Vista Del Mar and Placentia Avenue, and 354 public parking spaces on the residential streets within a quarter-mile radius of the Chapman Estate. In other words, there are over 500 on-street public parking spaces in the immediate Estate area. Additionally, almost every home in the neighborhood has a driveway, garage, or both to serve residential parking needs onsite instead of on the street.

For events of 50 people or more, including neighborhood events that are designed for nearby residents to walk to the Estate, at the most there would be the need for 15 or so parking spaces (i.e., for vendors/employees and disabled persons) because off-site parking and a shuttle are required.<sup>8</sup> In other words, there exists an oversupply of some 500 parking spaces in such cases. Even if another 50 residents chose to drive to the area for neighborhood events, such parking demand is dwarfed by the on-street parking supply (in that scenario, at a nearly 10 to 1 margin). In such cases, event users would not be expected to displace other coastal access visitors given the amount of available on-street parking in this area. And, as described earlier, these larger events are actually decreasing in number (from a maximum of up to 12 events to 10 events), and are only allowed for public purposes (i.e., the up to four Estate fundraisers (generally a maximum of 300 people and in one case a maximum of 450 people) and the up to six neighborhood events (a maximum of 100 people)).

For events with fewer than 50 attendees, for which attendees may park on public streets that surround the Estate area and for which there are no remote parking/shuttle requirements, the maximum number of on-street parking spaces required would be 49 to serve attendees (i.e., assuming a worst case scenario where each of the 49 attendees drove their own car to the event), and another 5-10 spaces maximum for vendors/employees. For many, if not most events, the number of needed parking spaces would be substantially less, given that most events would have fewer than 49 attendees, and some attendees would likely carpool with others or would walk/bike to the Estate from their residences in the neighborhood. Even if 60 spaces were necessary to cover such Estate needs in a worst-case scenario, over 450 on-street parking spaces would still be available for other users, including coastal access users. Further, most of the new events being added are in the realm of 10 to 25 attendees and would therefore have little impact on neighborhood and coastal access parking given the amount of on-street parking available in the area surrounding the Estate. For similar reasons, such events are not expected to generate traffic of an amount that would result in significant

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<sup>8</sup> The approved project also includes modifications to make off-site parking rules more stringent for events of 50 or more attendees by requiring a deposit to be forfeited if the shuttle requirements are not met. The approved project also requires the event host to work with the City's Special Events Committee to create a shuttle plan that ensures safe circulation, including the best routes, no idling of the shuttle in neighborhoods, etc.

traffic impacts, because events with fewer than 50 people will generate minimal traffic, essentially no different than traffic generated from visitors to the parks and beach access points in the area. For events of 50 people or more, detailed shuttle requirements ensure safe circulation routes and will keep Ocean Boulevard and surrounding streets relatively free of event traffic.

And, to be clear, the parking spaces that might be occupied that are associated with Chapman Estate uses would be overwhelmingly for visitor-serving and public community needs, not for private residential use or some other lesser Coastal Act and LCP priority use. In other words, the public parking spaces that might be utilized for the Chapman Estate event use would almost exclusively be used for public purposes, which helps distinguish such a conclusion here (that coastal public access is adequately protected) from other types of projects that may lead to privatization of the public right-of-way. In fact, part of the project objective is to open up the Estate for *more* public use and enjoyment, including through recreational classes and an expanded Open Gates program, which will help to enhance public access.<sup>9</sup>

Also, protecting public parking from being reduced due to private use (whether private parking or storage use, private encroachments into the public right-of-way, or other private use of public space) is a high priority in the coastal zone, especially where important coastal access and recreation points exist nearby. In this case, parking associated with Chapman Estate uses is for public cultural center activities as a general rule, and private events are limited, thus parking users would be predominantly for public purposes and not private purposes (such as for residential on-street parking). Thus, to the extent there is any question about allowing such use of the on-street parking resource for this type of use, several things are noted.

First, these events are a higher priority use in the coastal zone under the LCP and Coastal Act than is residential use. So, while some of the events may be private, as a whole, the Chapman Estate is increasing parks and recreation opportunities to this area of the coast by providing public access to a blufftop area and increasing the options to visit this special coastal resource. Further, without the private events, the Chapman Estate would not be able to generate the revenue needed to operate and provide increased public access. Second, it is important to point out that event parking is temporary, an hour or so for many events, and up to a maximum of six hours for some events. And private events are limited to smaller events, meaning such private use is limited. Further, even if an event is private, such events will provide a unique coastal experience to many people that can help broaden their appreciation for coastal protection, whereas street parking for residential use does not have the same coastal

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<sup>9</sup> And to this point, the LUP directive that “visitors...traffic and parking in residential areas should be minimized where practical” (see LUP Balanced Transportation Principle 1d above), is neither practical nor necessary to minimize such access in this case. On the former, there are simply limited options here for site users to park and access the property in ways different than identified. On the latter, as described above, the issues aren’t such that changes and limitations on such parking and use are necessary to avoid coastal resource impacts. In fact, to do so would reduce public use opportunities when that is not necessary given the limited degree of expected impacts (again, almost all of which are attributable to public use purposes and not lesser Coastal Act and LCP priority private uses).

benefit, and generally is occupied for much longer periods of time. Third, the above analysis of parking represents estimates for worst-case scenarios (i.e., assuming that each event has the maximum allowed occupancy and that everyone drives their own car, which is unlikely). People will likely carpool to the events, and events of 50 or more people will be accessed via shuttle. Finally, these are transitory impacts, whereas allowing/establishing private residential parking on public streets is more permanent, and there are limited tools to address or lessen the impact once it is allowed. In other words, two different things are being evaluated – car ownership and storage in the case of residential parking, and temporary and rotating access in the case of event attendee parking.

While it appears clear that there is adequate on-street parking to serve Chapman Estate needs while still accommodating other needs, such as for coastal access parking, the Appellants do raise technical LCP compliance questions with respect to IP Sections 17.108.010 and 17.108.020. These sections require that uses provide adequate off-street parking to meet their needs (including when capacity is increased, as it arguably is in this case), and Section 17.108.020 would specify that the Chapman Estate requires 33 off-street parking spaces to meet this need.<sup>10</sup> Obviously, the Chapman Estate does not meet this requirement, even when shuttles are used for larger events as there would still be the need for a small number of on-street parking spaces in those specific cases, as described above. That said, the objective of those provisions is to address the potential for on-street parking problems, and in particular in this shoreline context, to protect against potential adverse coastal access impacts. As described above, those potential issues and impacts are addressed here, because at the very most, 59-64<sup>11</sup> spaces out of 500 on-street public parking spaces will be taken up for event use, and even so, the event use is a high LCP and Coastal Act priority. Thus, while a possible technical LCP inconsistency, the outcome achieves the objective intended by these IP provisions in the first place.

Furthermore, the Coastal Act would suggest that the CDP for this project be approved. Specifically, the approved project: 1) helps to further maximize public recreational opportunities through increased access to the Chapman Estate; 2) protects lower-cost (and in this case no cost) public parking facilities for public use and expands lower-cost visitor opportunities at the Chapman Estate itself; 3) ensures that overcrowding of the parking resource will not occur here; 4) appropriately prescribes access in a way that does not impact the privacy of adjacent property owners, and; 5) protects oceanfront land and upland support areas for public recreational use and overall protects public access opportunities in this area. Finally, the approved project also allows for the continued and increased use of an incredible public facility, allowing more to enjoy all

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<sup>10</sup> IP Section 17.108.202 requires one space per employee, plus one space per four hundred square feet of gross floor area for public/quasi-public facilities such as this. Given there are 10-15 employees/vendors (at any one time) and 7,112 square feet of gross floor area at the Chapman Estate, that requirement equates to 33 off-street parking spaces.

<sup>11</sup> This maximum number of public parking spaces for event use includes the maximum of 49 attendees who could park on public streets around the Estate during events of less than 50, plus 10-15 vendors who could potentially work events of this size.

that it has to offer, which is a fitting tribute to the legacy and generosity of its namesake, Clifford Chapman.

For these reasons, the Appellants' contentions regarding the City's approval of a CDP amendment do not rise to the level of a substantial LCP or Coastal Act conformance issue with respect to coastal access and parking.

## **2. Neighborhood Character/Compatibility**

### ***Applicable LCP Provisions***

The LCP includes multiple provisions intended to protect community and neighborhood character and compatibility. These include siting and design and zoning standards (e.g., relating to coverage, height square footage, setbacks, etc.) which are not as applicable in this case given the Chapman Estate has long anchored and helped to define the character of this area for decades, since well before the Coastal Act. However, there are other LCP provisions that are applicable to this question, including as the approved project relates to allowed uses and noise in a residential area. On the former, the IP identifies allowable uses in the R-1 residential zoning district that applies to the Chapman Estate, including non-residential uses. IP Section 17.018.030 states:

***IP Section 17.018.030:*** *Uses requiring conditional use permits: A. Public utility buildings and structures; B. Public buildings, churches, schools, parks, playgrounds, hospitals, family care facilities, outdoor recreation facilities; C. Other similar uses deemed to be compatible with the R-1 zone and adjacent land uses.*

And Shell Beach is also more generally described, as applicable to this site, as accommodating medium-density land uses where structures are intended to be compatible with the character of the area, including with respect to maintaining and improving public access along the bluff top and emphasizing and preserving important historical/cultural resources. The LUP states:

***Neighborhood Planning Areas Policy LU-H-1:*** *Shell Beach Road is bordered by a narrow commercial strip backed by a narrow band of High-Density Residential. Behind the High-Density residential area to the Ocean, a medium density land use accommodates single family homes in the area. The focus of this area is a more traditional beach community with small single-family lots, street activity, and views of the ocean to the west, and the foothills to the east. The emphasis is on assuring that new and expanded homes are compatible with the scale, bulk, and character of existing neighborhood.*

***Neighborhood Planning Areas Policy LU-H-1:*** *The unique shoreline qualities of Shell Beach shall be protected by: a. Maintaining and improving public access along the bluff-tops. b. Pursuing all available sources to provide the necessary funds to improve and maintain the parks along the Shell Beach bluffs. ...*

***Historic Building Policy D-7:*** *Buildings of historic, architectural or cultural interest add to the ambiance of the city and should be honored, restored,*

*preserved and emphasized. Such structures are generally found in downtown and Shell Beach and include commercial buildings, older motels and cottages and residential structures.*

***Land Use Element P-16:*** *Pismo Beach contains the historic ambiance of the small California beach town. This is particularly evident in downtown and Shell Beach. Although hard to define, the preservation of this ambiance is important and the city shall encourage its preservation. This ambiance provides a link with the past, creates a pleasant experience, and adds to community diversity.*

As to noise standards, IP Section 17.084.020 identifies maximum acceptable noise exposure in residential areas, stating that maximum indoor noise may not exceed 60 decibels of continuous noise, and that maximum exterior noise may not exceed 45 decibels of continuous noise.

### **Analysis**

The Appellants contend that that a “cultural/event center” is not an allowed use in the R-1 zoning district, that the approved project is incompatible with the character of the neighborhood, and that increased event use is not an appropriate use in a single-family neighborhood, that it will lead to noise inconsistent with that allowed in residential areas, and that it will negatively impact the privacy and value of other R-1-zoned properties in the neighborhood (see full appeal contentions in **Exhibit 6**).

With respect to allowed uses, IP Section 17.018.030 allows outdoor recreation facilities, public buildings, and parks as conditional uses in the R-1 zoning district. The events, including the classes, the “Open Gates” access, and now the indoor uses of the main building on the Estate (which is owned by the City and thus is a public building), can reasonably be found to provide amenities consistent with IP Section 17.018.030. Further, at a minimum such uses are similar uses which, when “deemed to be compatible with the R-1 zone and adjacent land uses” are also allowed (and in this case the uses here are compatible (see previous finding and below). Additionally, the approved project will continue the current and historical uses of the Estate, with some modifications in the number and type of events and public access to the Estate. In short, the project is an allowed use in the R-1 zoning district (and in fact, has been permitted to be such a use before this current City action, which use is not changing).

As to character and general compatibility, it is helpful to look at the historical uses of the Chapman Estate. The Chapman Estate was originally built in the early 1900’s, and parties and community events have been held at the Estate for many years, including as documented in the time since Clifford Chapman purchased the property in 1962. In other words, the Chapman Estate is a historic part of the Shell Beach community and of Pismo Beach, and in fact helps to *define* the character here. The small private events planned for indoor use include dinner parties, small art shows, concerts, and lectures. These indoor events, combined with docent-led tours inside the Estate, educational programs, and recreational classes, align with the Estate’s role as a cultural and community center; a role that it has played for literally decades. Yes, the number of allowed events is increasing, but they are also as a rule getting smaller (and the number

of allowed larger events are decreasing by nearly 20%), and the whole premise of the changes is to facilitate enhanced public use of this significant public resource. The argument that such changes associated with the Estate would somehow make it incompatible with the neighborhood disregard this history, including that it is *already* permitted for such a use, and the use is simply changing in ways that should have less-than-significant impacts on the character of the area, including as the Estate is at the blufftop edge and not in the middle of the neighborhood. The neighborhood planning policies above give further insight into the importance of maintaining the history and fostering the use of the Chapman Estate as a public space and an event and community center under the LCP.

Finally, in terms of noise and compatibility, the Chapman Estate is subject to the same residential noise standards in IP Section 17.084.020 that apply to the rest of the neighborhood. Thus, events that conform to these standards are per se neighborhood compatible in terms of noise. Further, the new events allowed under the approved project will be relatively minor in comparison to the larger fundraisers already allowed at the Estate (and the number of these larger fundraiser events are not increased under the approved project).<sup>12</sup> Thus, the approved additional smaller events should not result in excessive noise that extends into the surrounding neighborhood. Also, all events must end by 8pm and all “teardown” of events must be completed by 9pm; thus, no events will extend into late evening hours; and no events may commence earlier than 8am. Furthermore, the City indicates that no noise complaints have been received by the police department during an event of fewer than 50 attendees at the Estate in the past three years, and only one event generated a noise complaint during that time.<sup>13</sup> Additionally, events with fewer than 50 attendees require a rental agreement through the City’s Tourism and Events department (which requires consistency with IP Section 17.084.020 noise standards), and events of 50 or more attendees require a Special Events Permit through the City’s Special Events Committee (which regulates alcohol, security, traffic, circulation, cleaning deposits, noise, and more). Further, for events of any size, specific event standards are defined in the City’s approval to ensure that noise does not exceed the LCP’s allowable levels (e.g., sound system speakers must face the ocean, DJs are not allowed, alcohol provided excludes hard alcohol and is limited to beer and wine, etc.).

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<sup>12</sup> New events under the proposed project are recreational classes (10 to 15 people), educational programs (a maximum of 49 people), private events (25 to 50 people), and three more neighborhood gatherings yearly (a maximum of 100 people at each gathering). Again, allowed large events are going from a maximum of 12 events (four fundraisers and up to five private events (generally a maximum of 300 people, with one fundraiser with a maximum of 450 people) and up to three neighborhood events (up to 100 people)), to a maximum of 10 such events (the same four fundraisers along with six of the same type of neighborhood events), all of which would be for public purposes.

<sup>13</sup> In 2018, during one of the four large annual fundraising events (sponsored by the Community Action Partnership of San Luis Obispo County), one noise complaint was submitted to the City’s Special Events Committee.

Considering that the approved project is required to comply with preexisting residential noise standards, is generally on par with historical use, that larger private events with 50 or more attendees are being eliminated, that all events require individual City event permits or rental agreements designed to limit any impacts, and that only one complaint has been received regarding noise during an event in the last three years, the City's approval of a CDP for the amendment appears to conform with LCP noise requirements.

For the above reasons, the Appellants' contentions regarding the City's approval of a CDP amendment here do not rise to the level of a substantial LCP conformance issue with respect to neighborhood character and compatibility.

### 3. Other Contentions

The City's LCP includes the following procedures for noticing of CDP and CDP amendment actions:

***IP Section 17.124.090: Notice Procedures: Notice of Appealable Developments.*** *Within ten calendar days of accepting an application for an appealable coastal development permit or at least ten calendar days prior to the first public hearing on a development proposal, the city shall provide notice by first class mail of pending application for appealable development. This notice shall be provided to each applicant, to all persons who have requested to be on the mailing list for that development project or for coastal decisions within the local jurisdiction, to all property owners and residents within one hundred feet of the perimeter of the parcel on which the development is proposed and to the coastal commission ...*

***IP Section 17.124.100: Public hearing procedures:*** *At least one public hearing shall be held on each application for an appealable coastal development permit application for a project in the R-1 and R-2 zones, except that no hearing is required for the development of an accessory dwelling unit consistent with Chapter 17.117 of this code, unless the accessory dwelling unit is part of a larger project that requires a public hearing or if a variance is required.*

The Appellants contend that the City did not follow the LCP's noticing and hearing procedures, claiming that the City Council and Planning Commission meetings were not properly noticed. However, for the City Council hearing, a notice of public hearing for this matter was published in the "New Times" newspaper on April 8, 2021, more than 10 calendar days prior to the April 20, 2021 hearing. For the Planning Commission hearing, a notice of the public hearing was published in the "New Times" newspaper on March 11, 2021, more than 10 calendar days prior to the March 23, 2021 meeting. In addition, the City sent notice via first class mail to all residents who had requested to be on the mailing list for the proposed project and to all residents within 300 feet of the Chapman Estate for both City hearings, exceeding minimum LCP noticing standard in that

regard.<sup>14</sup> It is noted that all three Appellants who contend they did not receive notice via U.S. mail live more than 300 feet from the site and thus were not noticed, including because such noticing was not required by the LCP. In addition, these same three Appellants did speak and/or submitted comments and participated in the City's public hearings for this matter, and thus cannot show they were otherwise harmed even were notice to be insufficient, which it was not. In short, the City properly noticed the CDP hearings for this matter.

Several Appellants also contend that the City failed to comply with Coastal Commission requirements on prior approvals, stating that the City did not properly notice their prior actions related to CUPs/CDPs to the Commission as required. Here, the City processed the original CUP in 2014 for City purposes, but did not process a CDP since no already established uses were being changed at the time. For subsequent amendments (in 2015 and 2016) the City processed these CDP actions because the intensity of use was changing, and these CDP actions were properly noticed to the Commission as required, including running applicable appeal periods without appeal. And here, the City again properly noticed its CDP action to the Commission, it ran its appeal period, and these Appellants properly appealed. Thus, these allegations are both immaterial and not proper grounds for appeal of the City's CDP action here (where appeal contentions are required to be limited to LCP and Coastal Act public access consistency).

Several Appellants also contend that the City Council did not consider recommendations from the City Planning Commission, citing IP Section 17.130.020, which requires the Planning Commission to determine whether or not the use of land or a structure is compatible to the uses allowed in the district. However, the City Council did consider recommendations in response to comments from the Planning Commission, as evidenced by the City Council removing two categories of larger private events from the proposed project per the Planning Commission's recommendation. And, in any event, it is immaterial whether the final City CDP action reflects the Planning Commission's recommendations. The City Council is the final discretionary arbiter for City CDPs, and the CDP action here reflects the City Council's decision.

Additionally, there were multiple inapplicable contentions. One Appellant broadly cites to the project's failure to comply with Section 30001.5 of the Coastal Act; however, with respect to the Coastal Act, the grounds for appeal are limited to the public access provisions of the Coastal Act. Similarly, several Appellants assert that the City failed to comply with California Environmental Quality Act (CEQA) requirements; however, compliance with CEQA is likewise not a proper ground for appeal to the Coastal Commission. Another Appellant cites to short-term rentals not being an allowable use at the Estate; however, the Chapman Estate is not proposed to be used for overnight accommodations and this contention is therefore not relevant. Further, one Appellant raised issues with a seawall on the property; however, the proposed project is not related to and does not implicate any seawall issues; any future modifications to any

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<sup>14</sup> For appealable developments such as this, the LCP requires that the City provide notice via first class mail to all residents who have requested to be on the mailing list and to all residents and property owners within 100 feet of the proposed development (IP Section 17.124.090).

shoreline armoring at the site would be subject to its own separate CDP processes. Lastly, an Appellant cites that the amendment constitutes inverse condemnation of his/her property; however, based on the allegations, it is unclear in what way the City's approval of this CDP constitutes an inverse condemnation of an Appellant's property. That Appellant's property will continue to be available for residential use. Regardless, this contention also is not a proper basis for appeal because it is not based on an inconsistency with the LCP or the Coastal Act's public access policies and a finding of "No Substantial Issue" is not the type of action that can be found to be a taking.

#### **4. Conclusion**

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity or public access, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of Coastal Act public access and/or LCP conformance. In the past, and as indicated earlier, the Commission has considered the following five factors in its decision of whether the issues raised in a given appeal are "substantial": (1) the degree of factual and legal support for the local government's decision; (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 as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In this case, these five factors, considered together, support a conclusion that the County's approval of a CDP for this project does not raise a substantial issue. First, as described above, there is a high degree of factual and legal support for the City's decision. In terms of coastal access and parking, the City reasonably found that there is adequate on-street parking around the Estate to provide for both coastal access and event parking during events of less than 50 attendees, and events of 50 or more attendees will be transported to and from the site via a shuttle. In fact, expanding use of the Estate to the public will enhance public access to this public property and the coastal bluff. Turning to the neighborhood compatibility contentions concerning zoning, noise, traffic, and privacy, the City reasonably found that a cultural center is an allowed use in a residential neighborhood under the LCP, and that event guidelines will ensure that LCP objectives related to noise, traffic, and neighborhood character concerns are met. Lastly, in terms of noticing and hearing procedures, the City has demonstrated that it met all LCP noticing requirements for the project. Thus, there is adequate factual and legal support for the County's decision and this factor weighs against finding substantial issue.

Turning to the second factor, the proposed project does not include structural development and only changes event parameters, thus the extent and scope of the project are small. This factor weighs against finding substantial issue.

With regards to the third factor, the significance of the coastal resources impacted by

the City's decision are high as public access and recreation is a priority under the Coastal Act and LCP. This factor, in the abstract, weighs in favor of finding substantial issue. However, given that public access and recreation is appropriately protected, and even expanded in ways, through the City's action, it does not suggest a substantial issue in this particular case.

Under the fourth factor, this project will not have precedential value on interpretation of its LCP since it is an allowed and ongoing use and is small-scale and site specific. This factor weighs against finding substantial issue.

Finally, turning to the fifth factor, this project does not raise issues of regional or statewide significance and are essentially isolated to the immediate area. This factor weighs against finding substantial issue.

Taken together, on balance, the County'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-PSB-21-0032 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 declines to take jurisdiction over the CDP application for the project.

### 3. APPENDICES

#### **A. Substantive File Documents<sup>15</sup>**

- Appeal File A-3-PSB-21-0032

#### **B. Staff Contacts with Agencies and Groups**

- City of Pismo Beach Planning Division

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<sup>15</sup> These documents are available for review from the Commission's Central Coast District office.