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Appeal Filed: 6/16/2021
Action Deadline: 8/25/2021
Staff: Forest Donovan - SC
Staff Report: 7/23/2021
Hearing Date: 8/12/2021

STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number: A-3-SLO-21-0039

Applicants: Jay and Lisa Cobb

Appellants: Commissioners Linda Escalante and Caryl Hart

Local Government: San Luis Obispo County

Local Decision: San Luis Obispo County coastal development permit number DRC2019-00297, approved by the San Luis Obispo County Planning Commission on April 22, 2021.

Project Location: On the blufftop and adjacent to Cayucos Creek seaward of North Ocean Avenue and fronting Cayucos State Beach in the unincorporated community of Cayucos in San Luis Obispo County (APN 064-481-009).

Project Description: Construction of a three-story, 35-foot-tall, 20,114-square-foot, 17-unit hotel, with a day-spa/health center, restaurant, bar, outdoor swimming pool, public blufftop pathway, and related development.

Staff Recommendation: Substantial Issue Exists

IMPORTANT HEARING PROCEDURE 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 Applicants, 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 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 these time limits). Only the Applicants, 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

San Luis Obispo County approved a CDP for a new three-story, 35-foot tall, 20,114-square-foot, 17-unit hotel on a vacant 1.1-acre blufftop and ocean fronting property in the unincorporated community of Cayucos in San Luis Obispo County. The project is seaward of North Ocean Avenue and it includes a day spa/health center, restaurant, bar, outdoor swimming pool, blufftop pathway, a 21-space parking area, and related development. The appeal contends that the County-approved project raises questions of consistency with the San Luis Obispo County Local Coastal Program (LCP) and the public access policies of the Coastal Act because the approved project: (1) has potential creek and bluff setback issues related to coastal hazards (such as exposure to wave action, sea level rise, subsequent bluff erosion, and the potential need for shoreline armoring); (2) does not adequately address public recreational access issues, including in terms of parking and lower-cost overnight accommodations; and (3) raises issues in regards to protecting public views and community character.

In terms of coastal hazards, the County calculated the required bluff setback using a hybrid approach of identifying 28 feet as the 100-year setback based on historic erosion rates, and then added 10 feet to account for 50 years' worth of sea level rise. However, doing so is inconsistent with LCP requirements to calculate 100 years for both, and the actual setback methodologies employed do not seem to adequately take into account the nature of the site's substrate, which appears to be fill material, and the way in which the site and hazards will change over time, including in light of rising seas. Further, the project was set back the LCP minimum of 25 feet from adjacent Cayucos Creek, but it is unclear whether such setback is adequate given that there is no evidence to suggest the coastal hazards analysis evaluated the combined effects of coastal and fluvial flooding, including from creek scour, and how that too affects site stability. Additionally, although the LCP does not allow for shoreline armoring for new development (and here the County conditioned the project to prohibit such armoring), the approved project appears to include a deeply embedded retaining wall just seaward of the main hotel buildings, raising questions about whether this retaining wall is intended to and/or will actually serve as some type of armoring device. In sum, it is not clear that the project has been appropriately sited to avoid coastal hazards without armoring as required by the LCP, including whether the blufftop setbacks (both ocean and creek sides) are adequate to account for erosion and impacts associated with coastal hazards, including

sea level rise, over time. These concerns are further exacerbated because ensuring proper setbacks is particularly important with a large hotel structure that may not be easily relocatable should it become threatened by coastal hazards in the future.

With respect to public access, while the County's approval includes a blufftop pedestrian path, it is located within the identified creek and bluff setback area and it does not include requirements for maintenance or upkeep (e.g., rebuilding, relocating inland when the bluff erodes, etc.), including in light of the aforementioned coastal hazards risks, and it is not clear that the path would actually be usable by the public over the longer term as is required. The approval also does not include a public accessway down to the beach, instead relying on an agreement with the neighboring private property for hotel guests to use their existing staircase (which does not appear to be open to public use, and the potential agreement is limited to hotel guests, and not the public, in any case). Further, although the County indicates that the project would ordinarily require 77 parking spaces, the County's approval requires only 21 parking spaces. However, it is both not clear that a hotel project like this is allowed any reduction of parking spaces under the LCP and, even if it were, this reduction is beyond what is allowed by the LCP for such reductions. Thus, it appears that hotel guests and employees will be forced into public parking spaces nearby, thus reducing and adversely affecting public beach parking opportunities.

In terms of lower-cost accommodations, the County did not analyze or require the provision of lower-cost accommodations, nor mitigate for the lack of same, as required by the Coastal Act. And although the project materials do not identify proposed room rates, they do describe the hotel as being "boutique" and intended to fulfill an unmet need for quality hotel accommodations in Cayucos. This suggests that rooms here will be higher cost and without the requisite lower-cost components and/or mitigation.

Finally, the LCP defines the site as being part of a special community that requires development to be sited and designed in a manner compatible with established architectural styles and natural features. However, the approved hotel is boxy in design, without any view corridors or breaks in building volume, and it would block nearly all existing public shoreline views from adjacent North Ocean Avenue, where these views are significant, including views across Cayucos State Beach and with Morro Rock in the distance. Further, any public views not blocked would be adversely impacted, including as the project would introduce a significant structure into a significant public viewshed with which it does not appear compatible. And the project would also introduce a large structure into the view of beachgoers at Cayucos State Beach, blocking inland views of coastal hills and otherwise increasing the massing of the built environment right at the edge of the beach and in the beach's viewshed. Additionally, the hotel would be a rather monolithic three-story, 35-foot-tall structure fronted by a surface level parking lot that lacks compatibility with the community's character, including with the natural and built environment.

For these reasons, Staff recommends that the Commission find that the appeal raises substantial LCP conformance issues and that the Commission take jurisdiction over the CDP application for the proposed project. If the Commission does so, then the de novo

hearing on the merits of the CDP application would be scheduled for a future Commission meeting. The motion and resolution to effect this recommendation are found on page 6.

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – County’s Final Local CDP Action Notice and Project Plans

Exhibit 3 – Appeal of County’s CDP Decision

CORRESPONDENCE

Correspondence 1 – Applicants’ Correspondence

Correspondence 2 – Public Correspondence

1. MOTION AND RESOLUTION

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

Motion: *I move that the Commission determine that Appeal Number A-3-SLO-21-0039 raises no substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act, and I recommend a **no** vote.*

Resolution to Find Substantial Issue: *The Commission hereby finds that Appeal Number A-3-SLO-21-0039 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

2. FINDINGS AND DECLARATIONS

A. Project Location and Description

The County-approved project is located on a vacant 1.1-acre blufftop/oceanfront property adjacent to and immediately upcoast of Cayucos Creek on North Ocean Avenue in the unincorporated community of Cayucos in San Luis Obispo County. The County-approved project includes the construction of a new three-story, 35-foot-tall, 20,114-square-foot, 17-unit hotel (16 hotel units and one manager's unit), including a day spa/health center, restaurant, bar, outdoor swimming pool, a blufftop pathway, 21-space parking area, and related development. See **Exhibit 1** for location maps and photos of the site; see pages 57-62 of **Exhibit 2** for the County-approved project plans.

B. San Luis Obispo County Approval

On April 22, 2021 the San Luis Obispo County Planning Commission approved a CDP for the project. The County's Final Local CDP Action Notice was received in the Coastal Commission's Central Coast District Office on June 8, 2021 (see **Exhibit 2**). The Coastal Commission's ten-working-day appeal period for this action began on June 9, 2021 and concluded at 5 pm on June 22, 2021. One valid appeal was received during the appeal period (see **Exhibit 3**).

C. Appeal Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the

inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This County CDP decision is appealable to the Commission because the project site is located between the first public road and the sea, within 300 feet of the inland extent of the beach and the seaward face of the coastal bluff, and within 100 feet of a stream, and because hotels are not the principally permitted use in the "Recreation" designation that applies to the site.

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.

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. 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 testimony 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 (if any) and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the

local government's CDP decision stands. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal.

In the second phase of the appeal, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances (including that apply in this case), 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).

D. Summary of Appeal Contentions

The appeal contends that the County-approved project raises questions of LCP and Coastal Act public access consistency because the approved development: (1) does not appear to have accurately calculated or accounted for LCP-required blufftop and creek setbacks, and the project includes a retaining wall that appears may act as shoreline armoring when that is not allowed by the LCP; (2) does not adequately address public recreational access issues, including in terms of parking and lower-cost overnight accommodations; and (3) introduces a significant structure into a prominent public viewshed in a way that blocks public views and otherwise adversely impacts views not blocked and the character of the surrounding area. For all of these reasons, the appeal suggests that the Commission needs to further evaluate these issues to ensure LCP and Coastal Act conformance.

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 substantial issue" (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 County's approval of a CDP for the project presents substantial LCP conformance issues.

2. Coastal Hazards

The LCP's coastal hazards provisions require development to be set back from coastal bluffs a sufficient distance to be safe from coastal hazards/bluff erosion, including as may be exacerbated by sea level rise, for a minimum of 100 years without shoreline armoring. The LCP states:

Estero Area Plan, Ch. 7, Section I.4: *The bluff setback is to be determined by the engineering geology analysis required in I.1.a. above adequate to withstand bluff erosion and wave action for a period of 100 years. In no case shall bluff setbacks be less than 25 feet....*

Estero Area Plan, Chapter 7, Section I.5. *Shoreline and bluff protection structures shall not be permitted to protect new development. All permits for development on blufftop or shoreline lots that do not have a legally established shoreline protection structure shall be conditioned to require that prior to issuance of any grading or construction permits, the property owner record a deed restriction against the property that ensures that no shoreline protection structure shall be proposed or constructed to protect the development, and which expressly waives any future right to construct such devices that may exist pursuant to Public Resources Code Section 30235 and the San Luis Obispo County certified LCP.*

The LCP also requires a minimum 25-foot setback from Cayucos Creek within the Cayucos urban area, stating:

Estero Area Plan Table 7-2: Coastal Stream Setbacks.

<i>Coastal Stream</i>	<i>Setback (feet)</i>
<i>Cayucos Creek</i>	<i>25</i>

Here, the County applied a 38-foot blufftop setback along the ocean frontage; 28 feet to accommodate projected erosion and an additional 10 feet to account for potential increased erosion due to sea level rise and increased wave action. There are multiple issues with this assessment. First, the County estimated 100 years of erosion based on an evaluation of historic erosion rates which do not account for changes in same moving forward due to sea level rise and other changes over time. Second, to address sea level rise, the County added 10 feet to the setback based on a suggestion that this accounts for 50 years of sea level rise, but it is not clear how or why that would be the case, and instead appears to be a "round number" used as some sort of proxy. However, not only is that not an appropriate manner of estimating potential setback

needs associated with sea level rise over time, but the LCP requirement is for an assessment of 100 years of impacts, not 50 years. In addition, the assessment did not adequately account for the effect of combined riverine/coastal impacts (and only applied the LCP-minimum 25-foot setback along adjacent Cayucos Creek), nor did it appear to adequately account for the fact that the site appears to be made up of fill and not native materials. The Commission's Geologist, Dr. Joseph Street, has reviewed the County's project materials on this point, and indicates that understanding the combined coastal/fluvial scour effects is particularly important in this case because those materials indicate that the site appears to be made up of terrace deposits, alluvium, or even fill, any of which would erode easily and quickly if subjected to more regular wave attack and higher sea levels. Dr. Street also notes that the setback does not appear to have accounted for factors of safety associated with slope stability over time, which is a fairly standard estimate for blufftop situations like this, and these factors would only increase the setback needed to meet LCP requirements.

In short, the required historical analysis and future estimates do not appear to have adequately taken into account critical factors, including the effects of increased coastal hazards and sea level rise over time on slope stability and erosion, and it does not appear that the project has been sited as required by the LCP. In fact, although the LCP does not allow for shoreline armoring for new development, and although the County conditioned the project to prohibit shoreline armoring, the approved project design includes a deeply embedded retaining wall just seaward of the main hotel buildings that potentially could function as some type of armoring device.

For all the above reasons, the County's CDP approval raises a substantial LCP conformance issue with regard to coastal hazards.

3. Public Access and Recreation

The Coastal Act's public access and recreation policies and the LCP require that public recreational access opportunities be maximized, including with the LCP requiring lateral and vertical access for projects located between the sea and first inland public road, such as this. The Coastal Act and LCP also require that lower-cost visitor and recreational facilities be protected, encouraged, and where feasible, provided. The Coastal Act states:

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

Section 30211. *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212. *(a) Public access from the nearest public roadway to the*

shoreline and along the coast shall be provided in new development projects except where: ...(2) adequate access exists nearby...

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

Section 30214(a). *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case...*

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

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

Similarly, the County's LCP reiterates and amplifies Coastal Act direction, including through requiring that coastal public access and recreational opportunities be maximized for everyone, that existing accessways be protected, and that recreational facilities be protected, encouraged, and where feasible provided, particularly ones that are lower cost. These policies include (in relevant part):

Access Policy 1. *Development shall not interfere with the public's right of access to the sea where acquired through historic use of legislative authorization.*

Access Policy 2. *Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development...*

Recreation Policy 1. *Coastal recreational and visitor-serving facilities, especially lower-cost facilities, shall be protected, encouraged and where feasible provided by both public and private means.*

Estero Area Plan, Cayucos Urban Area Standards, Recreation: *The following standards apply only to lands within the Recreation land use category.*

- A.** *The following standards apply to the approximately 1.8-acre property located on the south side of North Ocean Avenue, west of and adjacent to Cayucos Creek...*
- 2. Site Design Criteria—Public Access.** *Site design shall incorporate public access to and along the bluff top for a scenic vista. In addition, lateral beach access from the toe of the bluff to the mean high tide line, consistent with public safety and sensitive habitat concerns, shall be provided.*

Implementation Plan (IP) Section 23.04.420. Coastal Access Required. Development within the Coastal Zone between the first public road and the tidelands shall protect and/or provide coastal access as required by this section. The intent of these standards is to assure public rights of access to the coast are protected as guaranteed by the California Constitution. Coastal access standards are also established by this section to satisfy the intent of the California Coastal Act...

d. Type of Access Required:

(1) Vertical Access:

(i): Within urban and village areas: Within an urban or village area where no dedicated or public access exists within one-quarter mile of the site, or if the site has more than one-quarter mile of coastal frontage, an accessway shall be provided for each quarter mile of frontage.

For parking, the LCP states:

IP Section 23.08.012(b). *Exceptions to special use standards. The standards of this chapter may be waived or modified through Development Plan approval, except where otherwise provided by this chapter and except for standards relating to residential density or limitations on the duration of a use (unless specific provisions of this chapter allow their modification). Waiver or modification of standards shall be granted through Development Plan approval (Section 23.02.034) only where the Planning Commission first makes findings that:*

(1) Set forth the necessity for modification or waiver of standards by identifying the specific conditions of the site and/or vicinity which make standard unnecessary or ineffective.

(2) Identify the specific standards of this chapter being waived or modified.

(3) The project, including the proposed modifications to the standards of this chapter, will satisfy all mandatory findings required for Development Plan approval by Section 23.02.034c(4) of this title.

In no case, however, shall any standard of this chapter be reduced beyond the minimum standards of the other chapters of this title, except through Variance (Section 23.01.045).

IP Section 23.04.162(d). *Shared on-site parking adjustment: Where two or more nonresidential uses are on a single site, the number of parking spaces may be reduced through adjustment (Section 23.01.044) at a rate of five percent for each separate nonresidential use, up to a maximum of 20%; as long as the total of spaces is not less than required for the use requiring the largest number of spaces.*

IP Section 23.08.262(c). *The density of a hotel or motel is not limited by this title except that a site for such use shall be designed to accommodate all proposed units while also satisfying all applicable height, setback, parking and other standards of this title and the Land Use Element without the need for modification, adjustment or variance of such standards.*

IP Section 23.08.262(d). *Hotels and motels shall provide off-street parking as set forth in Section 23.04.166c(9) (Transient Lodgings). In the event that a hotel or motel includes any facilities in addition to overnight units (e.g., restaurant, bar, meeting rooms, etc.), all additional facilities shall be provided off-street parking as required by Section 23.04.166c of this title, in addition to the parking required for the hotel or motel.*

Thus, both the Coastal Act and the LCP include both general protections and requirements applicable to public access, as well as some that are quite specific. For example, with respect to lateral and vertical access, the Estero Area Plan (part of the LCP's Land Use Plan) includes a policy specific to this very site requiring the provision of a lateral blufftop pathway as well as beach access from the toe of the bluff to the mean high tide line. Here, however, while the County's approval does include a lateral blufftop pedestrian path that would apparently be available to the public,¹ it is located in the identified creek and bluff setback area. The County's approval does not include requirements for maintenance or upkeep of this path (e.g., rebuilding, relocating inland when the bluff erodes, etc.), which is particularly concerning in light of the aforementioned coastal hazards and erosion risks. Thus, it is not clear that the path would be available for longer-term public use as is required by the LCP. In addition, the County required an easement of 25 feet of sandy beach space for public use but it is unclear whether that meets the LCP's requirement to ensure that the entire beach from the toe of the bluff to the mean high tide line is available for public use.

In addition, the approval also does not include a vertical public beach accessway. On this, several points are made. First, although the County is correct that the site is closer than one-quarter mile from the next nearest existing vertical public beach accessway,² the site is located on the upcoast side of the North Ocean Avenue Bridge over Cayucos Creek, and there are no developed vertical beach accessways on this entire northern side of the town (roughly three-quarters of a mile) to where the road meets Highway 1. The Coastal Act and LCP's general provisions for requiring maximized public access opportunities (see, for example, the cited Coastal Act sections and LCP policies above) would suggest that a project of this scale, and a project that already must include lateral public access, could provide the vertical public access that is needed for this side of

¹ It is not clear that it would be available to the public because there are no conditions that require such, or that require signing and information or other management measures applicable to public use.

² This vertical access, which consists of beach access stairs in the public parking lot adjacent to Cayucos Pier, is located about 700 feet (not 600 feet as identified by the County) in walking distance from the project site.

town north of the bridge.³ In addition, although it appears that the site may have been used for such access in the past, there is nothing in the County record analyzing whether any prescriptive rights of access might be associated with the subject site, and how those would be protected if present. Finally, the County appears to have relied on an agreement that the Applicants apparently have with the neighboring private property for hotel guests to use the neighboring existing staircase (which does not appear to be open to public use) to help find the project approvable as it relates to vertical public access. However, it is not clear whether any such right exists, and it is not codified in the County's approval in a way that would suggest that the public, as distinguished from hotel guests, could make use of the stairway for public vertical access.

In terms of lower-cost accommodations, both the Coastal Act and the LCP require that lower-cost visitor and recreational facilities be protected, encouraged and, where feasible, provided (see Coastal Act Section 30213 and LCP Recreation Policy 1). As has been applied generally to overnight accommodations projects, such as hotels, these policies require lower-cost overnight accommodations to be provided where feasible. Here, however, the County did not analyze or require the provision of lower-cost accommodations nor mitigate for the lack of same. The County's analysis only found that the project's free public use of the identified blufftop pathway would fulfill the Coastal Act and LCP's lower-cost facilities requirements. But this does not account for the need to also evaluate and provide, where feasible, lower-cost facilities, including lower-cost overnight accommodations when considering an overnight facility, such as a hotel. And although, the project materials do not identify proposed room rates, they do describe the hotel as being "boutique" and fulfilling an unmet need for quality hotel accommodations in Cayucos, suggesting that rooms here will be higher cost and therefore without the requisite lower-cost components and/or mitigations.

Lastly, the County found the project would ordinarily require 77 parking spaces based on LCP parking requirements to accommodate hotel guests and workers, as well as for users of other hotel facilities such as the restaurant and spa. But the County's approval requires only 21 spaces with no spaces designated for public beach parking spaces.⁴ The County cited to IP Section 23.08.012(b), which allows for deviations from certain LCP parking standards if particular findings are met. However, it would appear that such deviation is not allowable for this project. In fact, IP Section 23.08.262(c) (which specifies special standards for hotels and motels in the Recreation land use designation) states that parking shall be provided on site "without the need for

³ And gaining vertical beach public access from this site and the northern part of town requires a trek along the roadway, and sometimes on the roadway pavement itself, and across a fairly narrow concrete access apron across a bridge, to arrive at the public parking lot south of the bridge and the associated public beach stairway.

⁴ While the LCP doesn't require a specific amount of public beach parking for shoreline development, there are a few things to note. First, including public beach parking is a fairly typical requirement imposed on new shoreline development, particularly hotels, to both maximize public coastal access as required by the Coastal Act and the LCP (again, see cited provisions above) but also to mitigate for the development's parking and traffic impacts on existing public access. And second, in this case, given that the hotel appears to be impermissibly underparked, it is likely that there will be traffic and parking impacts, including on existing on-street spaces used by the public for beach access.

modification, adjustment or variance of such standards.” As such, a hotel project like this is not allowed by the LCP to reduce parking requirements, as was done in this case. Further, even if it were to be allowed, IP Section 23.04.162(d) only allows a parking reduction up to 20% of the otherwise required total, which in this case would be a reduction of 15 spaces, resulting in a total of 62 required parking spaces. Thus, the reduction is beyond what the LCP allows even when a reduction is allowable under the LCP, and it is not here. And in any case, it is not clear that *any* parking reduction would be appropriate in this case, particularly such a large reduction, because that would likely mean that the project’s parking needs would be addressed via public parking options nearby, reducing and adversely affecting public beach parking opportunities.

For all the above reasons, the County’s CDP approval raises a substantial LCP and Coastal Act conformance issue with regard to public access and recreation.

4. Visual Resources and Community Character

The LCP requires the protection of scenic coastal areas and views to and along the shoreline and requires development to be sited and designed in a manner that respects the character of the surrounding area. Specifically, the LCP states:

Visual and Scenic Resources Policy 2. *Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors.*

Furthermore, for developed and more urban areas, like this part of Cayucos, additional standards apply. The LCP defines Recreation-designated parcels along Ocean Avenue, such as the project site, as a “special community” for which Visual and Scenic Resources Policy 6 applies. The LCP states:

Visual and Scenic Resources Policy 6. *Within the urbanized areas defined as small-scale neighborhoods or special communities, new development shall be designed and sited to complement and be visually compatible with existing characteristics of the community which may include concerns for the scale of new structures, compatibility with unique or distinguished architectural historical style, or natural features that add to the overall attractiveness of the community.*

IP Section 23.11.030: Definitions. Special Communities. *Areas and communities with unique, visually pleasing characteristics which serve as visitor destination points and include: ...d. Cayucos—Commercial and Recreation categories along Ocean Avenue.*

And finally, the LUP requires development on coastal bluff tops to be sited and designed to be compatible with the natural landform as much as feasible, as well as to minimize visual intrusion on adjacent sandy beaches:

Visual and Scenic Resources Policy 11. *Development on Coastal Bluffs. Permitted development shall be sited and designed to be compatible with the natural*

features of the landform as much as feasible. New development on bluff tops shall be designed and sited to minimize visual intrusion on adjacent sandy beaches.

The public's views that cross or otherwise are associated with the project site provide striking views from inland locations of both the adjacent central village of Cayucos, the Cayucos Pier, as well as of downcoast hills and shoreline stretching down to Morro Rock and Montaña de Oro. The site is also prominent in the views from Cayucos State Beach, which currently take in the hillsides behind this site and a range of built and natural environmental features. The approved development is boxy in design without any view corridors or breaks in building volume, and essentially would block nearly all such existing and significant public shoreline views from adjacent North Ocean Avenue and Cayucos State Beach. The LCP explicitly requires that this development be sited "to protect views to and along the ocean and scenic coastal areas" (Visual and Scenic Resources Policy 2), and that view here is not being protected, but rather is being replaced by views of the hotel, which is not consistent with that LCP requirement. Furthermore, the LCP requires that new development such as this not be visible from major public view corridors wherever possible (Visual and Scenic Resources Policy 2). The hotel would be very visible in these major public view corridors, and there is no evidence in the County's action that alternatives were considered to verify that it was not possible to avoid this outcome. On the contrary, the hotel appears to have been sited to maximize its prominence in this protected view corridor, which appears inconsistent with that LCP requirement.

Further, any public views not blocked would themselves be adversely impacted, as the project would introduce a three-story structure into this significant public viewshed with which it does not appear compatible. In addition, beachgoers' views at Cayucos State Beach that would not be blocked would be adversely affected by introducing increased massing of the built environment right at the edge of the beach, and in the beach's viewshed, which raises questions of consistency with Visual and Scenic Resources Policy 11's requirement for development to not domineer over or visually intrude upon sandy beaches. In fact, the hotel would be three stories and 35 feet tall with limited articulation, which is not akin to the generally modest one- and two-story residential scale of the town. Rather, the approved design appears as a rather bland and monolithic large structure fronted by a surface parking lot along North Ocean Avenue that does not blend in with its natural surroundings or the existing characteristics of the community, including the community's architectural aesthetic and natural features that add to the community's attractiveness, as required by the LCP (Visual and Scenic Resources Policy 6). In fact, as opposed to complementing and being visually compatible with the community's character as the LCP requires here (again, see Visual and Scenic Resources Policy 6), the project appears to do just the opposite, particularly in terms of its scale and its relation to the adjacent natural environmental features that are defining for Cayucos.⁵ All of these factors contribute to the project's lack of compatibility with its surroundings.

⁵ On this point some might suggest that the design is not dissimilar from the existing residential structure located adjacent to the site, and thus this similarity on its own ensures community compatibility. However,

For all the above reasons, the County's approval raises a substantial LCP conformance issue with regard to visual resource and community character provisions.

5. The "Five Substantial Issue" Factors

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP (and Coastal Act, as applicable here) conformity, 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 LCP and Coastal Act conformance. As mentioned previously, guiding the Commission's substantial issue analysis is CCR Section 13115(c), which states that the Commission may consider the following five factors when making this determination: 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.

Under the first factor, and as detailed above, the County's determinations do not have a high degree of factual and legal support. To identify a few key issues, the County's setback determination lacks sufficient factual support because it is erroneously based on a hybrid model taking into account projected sea level rise over a 50-year period, rather than the LCP required 100-year period, with a 10-foot proxy being added to address sea level rise. This does not represent the sort of analysis that is required by the LCP, including as it lacks details and specificity over the required 100-year period as it relates to the effects of increasing hazards and sea levels in relation to erosion, slope stability, and other hazard contexts, including as the site appears to be easily erodible (i.e., potential fill material as opposed to native material). Further, the setback from the creek also raises questions of fact in terms of site safety as it is not based on an evaluation of the combined effects of coastal and fluvial flooding, including from creek scour, and rather appears to simply be a minimum setback that was applied without adequate supporting analysis. Further, the County's decision to allow for the low amount of parking and to base its public vertical access conclusion on a potential

to do so misses the entire point of evaluating compatibility. The adjacent structure is hardly indicative of the built environment in Cayucos, and is in fact one of the larger (if not largest) structures in town. To suggest that an anomaly like that be used as the arbiter of community character is mistaken, as an anomaly defines the opposite of the character overall. Rather it is the overall community's character that matters in the LCP sense, and here it is the community's low intensity, generally one- and two-story scale that is critical to that question, as are the ways in which the natural environment is part of that compatibility question. Here, this site is located adjacent to the most significant natural resources in the entire community, namely the beach, the Pacific Ocean, and Cayucos Creek. These are community defining features and must be accounted for as well, including here where the approved project would loom over, as opposed to blend into, the important natural Cayucos Creek viewshed, and where there are very few sites in Cayucos that have the potential to affect same.

agreement with the neighboring landowner also lacks factual and legal support. Taken together, valid questions are raised regarding the County's interpretations of core LCP provisions, including in terms of coastal hazards and lower-cost accommodations (e.g., finding that providing a public pathway satisfies the Coastal Act's and LCP's lower-cost accommodations requirements). Therefore, the first factor weighs heavily in favor of finding substantial issue.

Turning to the second factor, the extent and scope of the approved development is significant. The County-approved project includes the construction of a new three-story, 35-foot-tall, 20,114-square-foot 17-unit boutique hotel (16 hotel units and one manager's unit), including a day spa/health center, restaurant, bar, outdoor swimming pool, a bluff top pathway, and related development. The project represents a large commercial project in any context, and particular within the generally limited scale of development in Cayucos, wherein community character is an important part of the LCP consistency analysis in this case. Accordingly, the second factor weighs in favor of finding substantial issue.

The third factor relates to the significance of coastal resources that would be affected by the County's decision. Here important and core LCP and Coastal Act protected coastal resources related to public access and recreation, public views, community character, and shoreline/beach loss are all affected by the County's approval of the project. This factor weighs in favor of finding substantial issue.

Under the fourth factor, the precedential value of the County's interpretation of its LCP using this CDP action is high. This includes the County's unsupported interpretation of the LCP's coastal hazard, public recreational access (including parking and lower-cost facilities), and public views/compatibility provisions that appear to have led to an LCP-inconsistent project related to each.

For similar reasons, the fifth factor also supports a finding of substantial issue. These sorts of determinations related to coastal hazards, public access and recreation, and public views/character compatibility are important not only here in Cayucos in this case, but are indicative of regional and statewide trends and issues that raise significant coastal resource concerns. To allow for the County's LCP to be interpreted the way it has here would affect how similar provisions are interpreted statewide and elsewhere in the region.

In this case, these five factors, considered together, support a conclusion that the County's approval of a CDP for this project raises a substantial issue of Coastal Act and LCP conformance. Thus, and for the reasons stated herein, the Commission finds that Appeal Number A-3-SLO-21-0039 raises substantial Coastal Act and LCP conformance issues in terms of coastal hazards, public recreational access, and public views/character compatibility. Therefore, the Commission finds that a substantial issue exists with respect to the County-approved project's conformance with the certified San Luis Obispo County LCP and the public access policies of the Coastal Act, and takes jurisdiction over the CDP application for the proposed project

6. Information Needed for De Novo Review of Application

As discussed above, the project lacks important supporting documentation, perhaps none more critical than a geologic and geotechnical evaluation, consistent with typical Commission-required methodologies and standards, that evaluates the nature of the site and its ability to accommodate development safe from coastal hazards and without armoring, including over time and against a 100-year evaluation timeframe. Thus, prior to bringing this matter back for Coastal Commission de novo review, the Applicants will need to provide such evaluation, working with Commission staff to ensure the evaluation meets the Commission's needs.

As to other supporting documentation, it is premature to specify the precise nature of such materials in depth in this case unless and until the geologic and geotechnical evaluation is complete and the site constraints are better understood, including as these constraints will drive what may be able to be found LCP and Coastal Act consistent at this location. That said, the Commission expects that the Applicants will work with Commission staff (once geologic and geotechnical criteria for development have been clearly established) to develop supplementary materials that would also be required for a Commission de novo review of a CDP application for a project here, including an assessment of the feasibility of providing lower-cost accommodations on site as part of the project; design revisions intended to satisfy the LCP's scale and community character requirements; design revisions to provide through views and other features intended to provide compatibility of structures with the surrounding natural and built environment (including enhanced articulation, use of natural materials and colors, use of visual screening/softening elements (including landscaping), etc.); visual simulations of the project from key and representative public viewpoints; and other materials necessary at that point to support a CDP application in a de novo review, including, if necessary based on site constraints, an evaluation of alternatives intended to better avoid and reduce identified coastal resource impacts. Absent such key fleshed out information, the Commission will not be in a position to fully evaluate a proposed project against requisite LCP and Coastal Act requirements, and does not intend to schedule a de novo hearing on this CDP application until the County and/or the Applicants have developed and provided such information, including to bridge the analytic gaps that are currently present and associated with the proposed project.

3. APPENDICES

A. Substantive File Documents⁶

- Coastal Development Permit Appeal Number A-3-SLO-21-0039

B. Staff Contact with Agencies and Groups

- Applicants
- San Luis Obispo County Planning and Building Department

⁶ These documents are available for review in the Commission's Central Coast District office.