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Staff: Kiana Ford - SC
Staff Report: 6/24/2022
Hearing Date: 7/14/2022

STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number: A-3-STC-22-0018

Applicant: City of Santa Cruz

Appellants: American Civil Liberties Union, Rachael Chavez, Stacey Falls, Lira Filippini, Marisol Goulett, Alicia Kuhl, Chris Lang, Reginald Meisler, Micah Posner, and Joy Schendledecker

Local Government: City of Santa Cruz

Local Decision: City coastal development permit application number CP21-0174 approved by the City of Santa Cruz Planning Commission by a 4-3 vote on March 3, 2022 and upheld by the City Council by a 5-2 vote on April 12, 2022.

Project Location: Public streets, rights-of-way, and parking lots within the City of Santa Cruz coastal zone

Project Description: Prohibit parking of oversized vehicles citywide on public streets, rights-of-way, and parking lots between midnight and 5am, provide alternative overnight parking areas and services for such displaced vehicles, and implement related measures (e.g., signage, striping, outreach, permits, enforcement, etc.)

Staff Recommendation: No Substantial Issue

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 Santa Cruz approved a CDP to prohibit oversized vehicle parking (i.e., vehicles longer than 20 feet and/or wider than 7 feet and taller than 8 feet) citywide¹ from midnight to 5am, to provide alternative overnight parking areas and services for such displaced vehicles (“safe parking”), and to implement related measures (e.g., signage, striping, outreach, permits, enforcement, etc.). The City indicates that the reason for the City-approved program is to address public safety, health, nuisance, and coastal resource concerns associated with persons who might use oversized vehicles as a place to sleep overnight, and further suggests that it is part of a number of City programs aimed at better assisting the City’s unsheltered community. The Appellants primarily contend that the City’s action is inconsistent with the City’s Local Coastal Program (LCP) and Coastal Act provisions requiring public access opportunities be maximized, and requiring environmental justice communities – here the unsheltered – to be protected.² The City responds that the approved project would not negatively impact public access because the project does not affect cars, large SUVs, or trucks; it would encourage parking turnover and reduce impediments to public access due to oversized vehicles; it would not limit daytime parking for oversized vehicles (i.e., from 5am to midnight); it would include a complementary safe parking program to accommodate oversized vehicle overnight parking, as well as services and support geared to unsheltered individuals that would be available at parking sites; and it would include a permit program for oversized vehicle owners that reside in dwelling units in the City, and for City hotel/motel guests, to allow overnight parking of oversized vehicles on a limited basis for these groups of people.

Although the City’s intent in adopting this CDP is not a part of the Commission’s substantial issue analysis, it has been a significant focus of the public’s interest in this CDP. Thus, staff evaluated the City’s evidence supporting the need for the CDP and concluded that the record does not include adequate evidence to support the City’s

¹ The City CDP action only applies to the coastal zone portion of the City, which is about one-quarter of the City, and about one-third of its more urbanized area. Separately but related, the City previously adopted a non-LCP City Municipal Code ordinance that applies outside of the coastal zone and that does the same thing as the CDP, and that ordinance has been in effect in non-coastal zone portions of the City since November 2021.

² The City of Santa Cruz LCP and the Coastal Act’s public access provisions provide the legal standard of review for these appeals. In addition in terms of the environmental justice contentions, the Coastal Act also allows the Commission to review coastal resource issues through an environmental justice lens, even if the LCP is silent on such issues (per Coastal Act Section 30604(h)).

case that there is a coastal resource reason for a CDP for the nighttime parking restrictions and related program elements (e.g., clear evidence suggesting that those parking in oversized vehicles at these times are leading to significant coastal resource impacts). In fact, the City's evidence that nighttime oversized vehicle parking leads to public health, safety, and nuisance problems, and associated coastal resource concerns (to which the City-approved project purports to be a solution) appears to actually be fairly limited, and it is not well-fleshed out in a way that would allow more detailed conclusions to be drawn as it relates to oversized vehicles as compared to non-oversized vehicles, daytime versus nighttime hours, and actual coastal resource impacts. Thus, staff believes that the record does not provide full support for the City's argument that the CDP is needed to address coastal resource impacts.

Nevertheless, ultimately, the public access question before the Commission in this appeal is actually rather simple. Namely, how will the City-approved program affect the public's ability to access and recreate in the coastal zone. Here, the program would operate between midnight and 5am, a time when public access pursuits are typically quite limited, and it would only affect that subset of that very small sample size that is seeking public access in the coastal zone via parking an oversized vehicle on public streets, rights-of-way, and parking lots. In that context, the effect of the City's action on nighttime public access would be minimal in staff's view. At the same time, the Coastal Act and the LCP require that public recreational access opportunities be maximized. Arguably, the City-approved parking restrictions and related project elements do not help to maximize such opportunities, and in fact such opportunities are reduced, albeit marginally, given the limited degree of such nighttime use. And the City has not provided a clear and supportable Coastal Act or LCP justification as to why such access reduction is necessary or appropriate.

In terms of environmental justice, staff has concluded that unsheltered individuals that use an oversized vehicle as a place to sleep at night constitute an environmental justice community to which the Coastal Act's environmental justice provisions and the Commission's Environmental Justice Policy apply. The primary question in environmental justice terms is whether the City's action does or does not disproportionately adversely impact this community. The Appellants contend the answer is yes, but the City suggests that potential adverse impacts to this community are mitigated by the proposed safe parking program and related elements. However, although the City indicates that the CDP-approved program would accommodate 55 such safe overnight parking spaces (of which the City indicates that 9 such spaces are operational as of the date of this report), the City declines to identify where such facilities are now and would be provided in the future, and has not indicated when the additional 46 spaces would be available. Whether 9 spaces now or 55 spaces later, it is not clear from that data that the City's program will be enough to accommodate all who would require such alternative parking, and when such parking would actually be available. In addition, absent their clear identification through the City CDP, it is not clear where such parking facilities would be located, and whether those sites would necessarily be conducive to public access pursuits (e.g., sites discussed in the past have been miles from the coast and outside of the coastal zone). That is not to say that the City's proposed safe parking program is without value. Indeed, if fully implemented, it would be a marked improvement from the City's previous iteration of this project from

2016,³ including because it at least provides an overnight parking option (albeit limited and still in need of definition) for some portion of those affected by the parking restriction. It also provides complementary program elements designed to provide support services for unsheltered individuals, including to help move them into housing.⁴

Given the limitations on the City's supporting data, however, and the lack of clarity as to where and when alternative parking would be provided and be available for use, it is difficult to say with certainty one way or another whether all who would be displaced by the midnight to 5am parking restriction would be able to be accommodated by the City's safe parking program. In addition, a variety of program elements are not clearly fleshed out (including requirements for users to register for the program, enforcement and implementation details, etc.). Thus, staff's assessment is that the City's program would disproportionately affect an environmental justice community, namely unsheltered individuals who use an oversized vehicle as a place to sleep, at night. This is perhaps clearest in terms of the special treatment afforded others with a need to park an oversized vehicle during the restricted midnight to 5am hours who might reside in a dwelling unit in the City, or that might be staying at a hotel or motel in the City, and for which the City would provide permits for these persons to park, notwithstanding the parking restriction that would apply to others, including the unsheltered.

Thus, even though the public access impacts of the City's decision appear to be very limited, staff believes it is fair to conclude that the City-approved program does not maximize public access opportunities as is required by the Coastal Act and the LCP, and further believes that such public access concerns, again albeit limited, are amplified by the environmental justice analysis. Despite these concerns with the project, at the basic public access/coastal resource level, which is the legal standard of appeal review here, staff believes that the public access impact in question is negligible. And at the substantial issue phase of the appeal, the Commission is not tasked with making Coastal Act or LCP consistency findings. The Commission is tasked with evaluating the City's action to understand whether it raises a substantial issue in terms of such consistency. While some might argue that is a distinction without a difference, it is not, and it allows the Commission some discretion on whether to take jurisdiction over CDP applications in appeal cases.

Here, although staff does not believe that the City has made a great case to justify public access reductions, and although such access opportunities are not maximized, in light of the limited degree of impact expected to members of the public accessing the coastal zone between midnight and 5am, and the City's professed need for a program of the type it permitted, staff recommends that the Commission exercise its discretion to

³ Note that the City previously approved a CDP for a similar program in 2015, that City CDP action was appealed to the Commission, the Commission found a substantial issue and took jurisdiction over that CDP application in 2016, the City ultimately abandoned that project in favor of pursuing a new CDP through a new City process, and the current City action on appeal is the culmination of those efforts.

⁴ And the City indicates that its intention is to make the program better over time (e.g., more services, more safe parking spaces, 24-hour support, etc.), but the nature of those future program improvements are also not known at this time, and are not a part of the City action that is before the Commission in this appeal.

find that the City's CDP action does not raise a substantial public access issue, and decline to take jurisdiction over the CDP application on that basis. In drawing such a conclusion, staff is not indifferent or callous to the issues affecting those who might need to sleep in their vehicles at night in Santa Cruz. On the contrary, such an outcome is a terrible and tragic circumstance, and an issue of concern not only in Santa Cruz, but also in other coastal communities and to all who enjoy the State's Coastal Zone. However, such situations are a function of the other societal issues, and not an issue of impeding public access, and frankly fall outside the purview of the Commission's coastal resource protection mandates. In fact, much of the crises facing the unsheltered community that use their vehicles (oversized or not) to sleep at night relates to broader social services and socioeconomic conditions that are better addressed by local governments and other applicable agencies under their power to regulate for public health, safety, and welfare. Staff strongly supports local governments and other agency partners in finding solutions to these kinds of problems, but believes that the ability of the Commission to offset consequences due to non-coastal resource concerns is simply beyond this agency's authority.

As a result, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP conformance issue, and that the Commission decline to take jurisdiction over the CDP for this project. The single motion necessary to implement this recommendation is found on page 7 below.

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EXHIBITS

- Exhibit 1 – City-Approved Parking Restriction Area
- Exhibit 2 – City-Approved Parking Program Description
- Exhibit 3 – City’s Final Local CDP Action Notice
- Exhibit 4 – Appeals of City CDP Approval

CORRESPONDENCE

EXPARTE

1. MOTION AND RESOLUTION

Staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission would not take jurisdiction over the underlying CDP application for the proposed project and would not conduct further hearings on this matter, and that the local government CDP decision would stand 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, which would come back to the Commission for the de novo portion of the hearing and potential action at a subsequent meeting. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission determine that Appeal Number A-3-STC-22-0018 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603, and I recommend a yes vote.*

Resolution to Find No Substantial Issue. *The Commission finds that Appeal Number A-3-STC-22-0018 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 Description and Location

The City-approved project would prohibit parking of oversized vehicles (i.e., defined to be vehicles⁵ longer than 20 feet in length, and/or wider than 7 feet and taller than 8 feet) citywide⁶ on public streets, rights-of-way, and parking lots between midnight and 5am,⁷ would provide alternative overnight parking areas and services for such displaced vehicles (“safe parking”), and would implement related measures (e.g., signage,

⁵ As that term is defined in Section 670 of the California Vehicle Code, namely: “A “vehicle” is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.”

⁶ The City CDP action only applies to the coastal zone portion of the City, which is about one-quarter of the City, and about one-third of its more urbanized area.

⁷ Because the City already has a Coastal Commission-issued CDP that limits parking of all vehicles on the seaward side of West Cliff Drive between the hours of midnight and 5am (CDP A-3-STC-07-057), affecting about one-half of all of the City’s available immediate shoreline parking, the City’s action here does not affect that area as parking is already restricted during that time frame.

striping, outreach, permits, enforcement, etc.).^{8,9} According to the City, the CDP-approved safe parking program would ultimately provide 55 alternative overnight parking spaces for oversized vehicles, where 9 spaces are available as of the date of this staff report and the remainder would come online at some undetermined date. The City declined to identify the locations of the safe parking program overnight parking spaces in the CDP action, or since.¹⁰ In any case, participants in the safe parking program would be required to register with the City and sign a code of conduct, but the City would provide the overnight spaces and associated facilities (i.e., porta-potties, hand washing stations, garbage/recycling, etc.) free of cost. The safe parking areas would be operational from 8pm to 8am every day,¹¹ although the City CDP also allows for these times to be altered under certain circumstances.¹²

Not all oversized vehicles would be prohibited from nighttime parking under the City-approved project. Specifically, the program includes permit options for both those who live in a dwelling unit in the City, as well as City hotel/motel guests, that would allow them to park their oversized vehicles overnight subject to certain limitations. For those who reside in such a dwelling unit, the City will offer an annual permit for parking within 400 feet of their unit for four 72 hour periods total per calendar month, and will offer such individuals up to six permits annually for their out-of-town guests subject to the same restrictions.¹³ For hotels and motels, the City will offer unlimited free permits that can be distributed to their guests, where each such permit would be valid for up to 72 hours.

The City suggests that the reason for the City-approved program is to address public health, safety, nuisance, and coastal resource issues associated with persons who might use oversized vehicles as a place to sleep overnight, and further suggests that it

⁸ Note that the City previously adopted a City Municipal Code ordinance that applies outside of the coastal zone and that does the same thing, and that ordinance has been in effect in non-coastal zone portions of the City since November 2021 (City ordinance No. 2021-20).

⁹ Note that the City previously approved a CDP for a similar program in 2015 and that City CDP action was appealed to the Commission in 2016 (Appeal Number A-3-STC-16-0063). Following a public hearing, the Commission found a substantial issue and took jurisdiction over that CDP application in 2016. However, the City ultimately abandoned that project in favor of pursuing a new CDP through a new City process, and the current City action effectively replaces that prior project and moots that prior CDP application.

¹⁰ And declined to identify such locations when asked by Commission staff as part of the preparation of this report. As such, the City CDP would authorize such development at an unknown number of locations in the City, some of which may or may not be in the coastal zone.

¹¹ The City indicates that it is researching means to expand the safe parking program so that it can operate 24 hours and every day, but such expansion is not part of the City-approved program that has been appealed to the Commission.

¹² The City CDP states: "Hours generally shall be from 8:00 PM – 8:00 AM time frame. Within the Coastal Zone, hours of operation shall be within this time frame, except that occasional, minor deviations from the 8:00 PM to 8:00 AM hours within the Coastal Zone may be allowed to facilitate provision of services to the program participants, so long as the additional hours are of a frequency, duration, and/or location such that they do not adversely interfere with coastal access" (see Exhibit 3).

¹³ The fees for the annual permits for such residents have not yet been established.

is part of a number of City programs aimed at better assisting the City's unsheltered community.

See Exhibit 1 for a map of the City-approved overnight parking restriction area (i.e., public streets, rights-of-way, and parking lots in the City's coastal zone), and see Exhibit 2 for the City-approved project description.

B. City of Santa Cruz CDP Approval

On January 12, 2022, the City of Santa Cruz Zoning Administrator approved a CDP for the above-described project, and that approval was subsequently appealed (by the American Civil Liberties Union, and by Santa Cruz Cares (via Reginald Meisler)) to the City Planning Commission. The Planning Commission upheld the CDP approval (by a vote of 4-3) on March 3, 2022, and the same appellants appealed that action to the City Council, which similarly upheld the CDP approval (by a vote of 5-2) on April 12, 2022. The Coastal Commission's Central District Office received the City's Final Local CDP Action Notice (see Exhibit 3) on April 22, 2022, and the Commission's ten-working-day appeal period for this action began on April 25, 2022 and concluded at 5pm on May 6, 2022. Ten valid appeals (discussed below, and see Exhibit 4) of the City's CDP action were received during the appeal period.

C. Appeal Procedures

Coastal Act Section 30603 provides the standards for an appeal to the Commission for 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. The City's CDP approval is appealable for multiple reasons in this case: first, on locational grounds (i.e., for those portions of the project area located between the first public road and the sea; within 300 feet of beaches, coastal bluffs, or the mean high tide line where there is no beach; and/or within 100 feet of wetlands and/or streams), and second, because it is a major public works project.¹⁴

¹⁴ The Coastal Act defines public works to include "All public transportation facilities, including streets, roads, highways, public parking lots and structures, ports, harbors, airports, railroads, and mass transit facilities and stations, bridges, trolley wires, and other related facilities" (Section 30114), and its implementing regulations define "major public works" to include "publicly financed recreational facilities that serve, affect, or otherwise impact regional or statewide use of the coast by increasing or decreasing public recreational opportunities or facilities" (Title 14, Division 5.5, Section 13012 of the California Code of Regulations (CCR)). The affected streets, rights-of-way, and parking lots meet both definitions. In addition, the cost of the City-approved program is in excess of \$299,188, and the project constitutes a major public works project for this reason as well (per Section 13012(a)).

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. In this case, Commission staff requested that the City waive this requirement to allow staff adequate time to examine the record and the issues presented prior to a hearing, particularly given the level of interest in and controversy over the City's action, but the City declined. Thus, the City has not waived that deadline, and the Commission is required to address the substantial issue portion of the appeal within the applicable 49 working days (i.e., by July 17, 2022; after the Commission's July meeting and before the Commission's August meeting), and thus this matter has been scheduled for the Commission's July meeting.

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.¹⁵ 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

¹⁵ 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 substantial issue..." (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.

government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

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

In the second phase of the appeal, the Commission must determine whether the proposed development that is the subject of the CDP application is consistent with the applicable LCP (and in certain circumstances the Coastal Act's public access and recreation provisions; which would apply to portions of the project approved by the City in this case). 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 ten Appellants¹⁶ contend that the City-approved CDP for the project violates LCP and Coastal Act public access provisions in five main ways. They argue (1) it does not provide maximum public access to people of all income levels, including those who live in oversized vehicles; (2) the City has not effectively documented negative coastal resource impacts due to overnight oversized vehicle parking (and thus what would be 'fixed' by the project); (3) it violates Coastal Act environmental justice provisions and the Commission's Environmental Justice Policy because it does not provide any type of environmental justice analysis and unfairly limits access to the coast for low-income people, people of color, and those with disabilities; (4) the nighttime oversized parking permit for those living in dwelling units in the City is not fair because it excludes those who do not live in such a unit (and/or those who do not know someone who does), including unsheltered Santa Cruz residents; and (5) it impacts Coastal Act-protected (under Section 30116) sensitive coastal resource areas associated with housing for low-income persons using their vehicles for shelter.

In addition to the above contentions, the American Civil Liberties Union also raises contentions unrelated to the Coastal Act or LCP, namely that the program violates the Santa Cruz 2030 General Plan because it creates unequal treatment of persons living on the coast; that it runs afoul of the Santa Cruz 2015 – 2023 Housing Element because it negatively affects oversized vehicles that are primarily used for shelter; that it violates the U.S. Constitution's Eighth Amendment because it punishes people for seeking life sustaining activities; that it violates the due process clause of the U.S. Constitution's Fourteenth Amendment by giving the City authority to enforce the midnight to 5am

¹⁶ Namely, the American Civil Liberties Union, Rachael Chavez, Stacey Falls, Lira Filippini, Marisol Goulett, Alicia Kuhl, Chris Lang, Reginald Meisler, Micah Posner, and Joy Schendledecker.

oversized vehicle parking restriction and potentially causing severe hardship on affected persons; and that it fails to comply with the Americans with Disabilities Act and the California Disabled Persons Act because it would disproportionately harm individuals with disabilities living in their oversized vehicles. While these additional contentions are acknowledged, they are unrelated to the applicable Coastal Act and LCP legal standard of review (see just below) and are thus do not raise a substantial issue under the Coastal Act or LCP.

Please see Exhibit 4 for the ten appeals.

E. Standard of Review

The standard of review for these appeals is the City of Santa Cruz LCP and the Coastal Act's public access provisions.¹⁷ The Appellants allege the City-approved project does not conform with that standard of review, and the Commission here is charged with evaluating those allegations in light of LCP provisions and Coastal Act public access provisions.

F. Substantial Issue Determination

1. Public Access

Applicable Coastal Act and LCP Provisions

The Appellants do not cite to specific LCP or Coastal Act public access policies, but applicable policies on this point include the following Coastal Act provisions:

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...*

Section 30212. *(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects ...*

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 feasible, provided. Developments providing public recreational opportunities are preferred. ...*

¹⁷ In addition in terms of the environmental justice contentions, the Coastal Act also allows the Commission to consider environmental justice concerns even if the LCP is silent on such issues (see Coastal Act Section 30604(h), and the Environmental Justice section that follows).

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 including, but not limited to, the following: (1) Topographic and geologic site characteristics. (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.*

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Section 30220. *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

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.*

Section 30240(b). *Development in areas adjacent to ... parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those ... recreation areas.*

LCP public access provisions both reiterate and amplify these Coastal Act provisions, including stating in the LCP's Land Use Plan (LUP):

Policy 1.7. *Develop plans to repair, maintain and maximize public access and enjoyment of recreational areas along the coastline consistent with sound resource conservation principle[s], safety, and rights of private property owners.*

Policy 1.7.1. *Maintain and enhance vehicular, transit, bicycling and pedestrian access to coastal recreation areas and points.*

Policy 3.5. *Protect coastal recreation areas, maintain all existing coastal access points open to the public, and enhance public access, open space quality and recreational enjoyment in a manner that is consistent with the California Coastal Act.*

Policy 3.5.3. *Require new development and public works projects to provide public access from the nearest public roadway to the shoreline and along the coast, except where it is inconsistent with public safety, protection of fragile coastal resources, or where adequate access exists nearby.*

Policy 3.5.5. *Develop and implement plans to maximize public access and enjoyment of recreation areas along the coastline.*

In sum, Coastal Act Section 30210 and LCP Policy 3.5 require Coastal Act authorized development to maximize public access and recreational opportunities. Coastal Act Section 30211 prohibits development from interfering with the public's right of access to the sea where acquired through use or by legislation. In approving new development, Section 30212 requires new development to provide access from the nearest public roadway to the shoreline and along the coast, save certain limited exceptions, such as existing adequate nearby access. Section 30212.5 ensures new parking is adequately distributed within an area to mitigate potential impacts. Lower cost visitor and recreational facilities are protected and encouraged under Section 30213. Section 30214 allows for public access policies to consider the unique characteristics of new development, and to allow for public access to be tailored in an appropriate manner in light of that context. Sections 30220, 30221, and 30223 protect coastal, oceanfront, and upland areas for public access and recreational uses. New development in areas adjacent to parks and recreational areas must protect those areas under Section 30240(b). Similarly, LUP Policies 1.7 and 3.5.5 direct the City to develop (and implement in terms of Section 3.5.5) plans to maintain and maximize public access and enjoyment of recreational areas along the coast. And Policy 1.7.1 requires that all forms of access to recreational areas and destinations be maintained and even enhanced, including vehicular access. Finally, Policy 3.5.3 requires new development, and explicitly public works projects such as this one, to provide public access from the nearest public roadway to the shoreline and along the coast unless it is already adequately provided, or where public safety or coastal resource concerns would demand otherwise.

Coastal Act Section 30210 and LUP Policy 3.5 requirements to maximize recreational access opportunities represent a different threshold than to simply provide or protect such opportunities, and is fundamentally different from other like provisions in this respect: it is not enough to simply provide such opportunities to and along the coast, and not enough to simply protect such opportunities; rather such opportunities must also be maximized. These policies provide fundamental direction with respect to projects along the California coast when public access issues are raised, as here where the Appellants make it a central theme of their appeals. Taken together, these

overlapping policies require maximization of public access and recreation opportunities for the public, particularly free and low-cost access, and including explicitly vehicular access via the LCP.

At the same time, the Coastal Act and the LCP also require that such access not be maximized at all costs, and explicitly require that the public access policies be implemented in a way that takes into account the “time, place, and manner of public access depending on the facts and circumstances in each case”, including evaluating the capacity of the area in question to sustain use and at what level of intensity, the potential need for “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,” and “[t]he 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 30214). Similarly, the direction in LUP Policy 1.7 to maximize public access and enjoyment of recreational areas is tempered by the need for such maximizing to be consistent with “sound resource conservation principle[s], safety, and rights of private property owners”. And LUP Policy 3.5.3 similarly refers to the need evaluate public safety, coastal resources, and the adequacy of nearby access when considering how the access required is provided. Thus, when the Commission considers development that may impact public access, as in this appeal, the Coastal Act and the LCP require the Commission to analyze the impacts holistically and not to focus only on maximizing public recreational access opportunities in a vacuum.

Analysis

Parking, and especially free and/or lower cost parking, is an important coastal resource and public commodity in the coastal zone, and it is no different in the City of Santa Cruz, which is a prime visitor destination. Santa Cruz’s shoreline is a magnet for coastal visitors, including from the greater San Francisco Bay Area as well as from more inland areas, and its coastal zone is sometimes strained to accommodate all of the public access it provides, including critically with respect to parking for those not fortunate enough to live in the City’s coastal zone area and along its shoreline. And lacking significant public parking lot options, most coastal visitors arriving to Santa Cruz area coastal zone destinations via vehicles make use of on-street parking opportunities, especially areas most directly near the shoreline and its access points. In this area there is typically a limited supply of, and high demand for, on-street parking for these coastal visitors. In short, free and/or lower cost parking, particularly along public streets and rights-of-way, is an important public access need, especially for those coming from further away and least able to afford pay parking options. It is in that context that proposed parking restrictions are required to be understood.

Parking restrictions are proposed in local jurisdictions for a variety of reasons. Sometimes it is a matter of a desire to generate a funding stream, other times it is to facilitate desired use patterns (e.g., where a time limit is added to ensure turnover so potential visitor use is not thwarted by vehicles that never move), and yet other times it is to address an identified problem that the parking itself is generating. The parking restrictions proposed here have been framed by the City in terms of the latter, and the City has cited to public safety and public health problems, public nuisance issues,

camping in areas not called out for camping (and thus not equipped to handle that type and intensity of use), and coastal resource impacts associated with such overnight parking. In light of the Coastal Act and LCP provisions above, it is important that any such problems be clearly identified and substantiated, and then that applicable responses be as focused as possible to address the problem while avoiding public access impacts as much as possible. On this point, the City states:

Community residents contact the city regularly with requests to address the presence of and/or impacts from extended oversized vehicle parking ... To date in 2021, there have been at least 15 emergency calls for services to 911 that have been related to oversized vehicles, with seven of those calls related to fire and/or gas leakage. In calendar year 2020 and to date in 2021, the Santa Cruz Fire Department reported 38 fire incidents that are vehicle related, three that were specifically related to oversized vehicles. Also to date in 2021, there were 12 oversized vehicle related service calls and 14 right of way calls to the Wastewater Collection Division. Additionally, police vehicle abatement activities have continued over the years. According to the Vehicle Abatement Officer, in the calendar year 2020, 2,243 abatement notices were issued, 197 vehicles were towed, including 20 which were oversized vehicles or camper vans. Since January of this year [i.e., 2021], the Police Department has received 2,456 calls with a recreational vehicle/motorhome or abandoned vehicle associated with the call. In regard to the vehicle abatement program, the Police Department tagged 294 recreational vehicle/motorhome and towed about 12 of them.

Thus, and regarding oversized vehicles specifically, the City identifies fifteen 911 calls, three fire department incidents (where an additional 35 such incidences affected non-oversized vehicles), twelve service calls, fourteen right-of-way calls, some number of calls to the City Police Department,¹⁸ and twenty vehicles towed¹⁹ (where an additional 177 non-oversized vehicles were towed) spanning parts of 2020 and 2021. Thus, the City reports 41 calls made to the City explicitly regarding oversized vehicles, some additional number past that to the Police Department, and 23 actual incidents regarding oversized vehicles (i.e., fires and towing) over parts of 2020 and 2021. Several things are noted.

First, calls to the City alleging problems are not necessarily the same as actual problems, and it is unclear to what extent such calls involved demonstrable public

¹⁸ On this point the City reports nearly 2,500 calls to the Police Department regarding RVs/motorhomes or abandoned vehicles, but doesn't distinguish between the two, and doesn't explain how many RVs or motorhomes would constitute oversized vehicles in any case. As a result, it is unclear how many such calls were regarding oversized vehicles. Thus, it is not clear how many calls were in relation to oversized vehicles.

¹⁹ The City cites to twenty oversized vehicles or camper vans being towed in one instance (without distinguishing between the two types of vehicles), and to twelve RV/motorhomes being towed in another. Thus, the City uses a series of descriptors that may or may not all constitute oversized vehicles. In addition and bracketing that issue, it is not clear if the twelve towed vehicles were a subset of the twenty, or were in addition to them. Given the twenty vehicles towed were expressly part of the abatement program, and the other twelve were as well, it is presumed that the total was twenty vehicles towed, of which some number presumably met the criteria to constitute an oversized vehicle.

health, safety, or nuisance issues as the City suggests. It is possible that none of these calls did; conversely, it is also possible that all of them did. However, the data provided does not allow for a deeper understanding for identifying a problem past identifying that these calls were made for the reasons articulated over that time frame.

Second, the three fire incidents attributed to oversized vehicles is three too many, of course, but it also 3 out of 38 vehicular fire incidents over the report time period. In other words, over 90% of such incidents were for other types of vehicles, and less than 10% was attributable to oversized vehicles. In addition, the incidents themselves are not further documented, and, like the calls described above, it is unclear what problem was presented in each case. Similarly, in reporting that 20 oversized vehicles were towed, the City reports that 177 other vehicles were also towed, meaning that about 90% of such tows were for other types of vehicles, and less than 10% was attributable to oversized vehicles.²⁰

Third, the City does not report the data in terms of nighttime versus daytime hours, and to what extent there is a nighttime problem. In other words, it may be that all of these calls and incidents relate to daytime hours, in which case their value for understanding the City's alleged public health, safety, nuisance issues at nighttime, when the City-approved restrictions and associated program would apply, may be more limited.

And finally, it is not clear the way in which such calls and incidents equate to coastal resource impacts that might require remediation through a CDP. Although the City alludes to as yet unspecified and undocumented problems with litter and waste attributable to overnight parking of oversized vehicles, it is not clear whether and to what degree there might be a bonafide coastal resource impact. And while the City also alleges that some 50 oversized vehicles park in the coastal zone, and that the program will help free up these parking areas for other visitors by making them move each night, there is no analysis to suggest that the program will have any actual effect on the ability of the public to park and access the coast, especially as it relates to daytime access. Thus, the City has not provided sufficient evidence or explained how such evidence shows that overnight parking of oversized vehicles creates public health, safety, and nuisance issues or related coastal resource impacts.

In short, although not the Commission's standard of review for the subject appeals, the Commission finds that the City's evidence of a nighttime public health, safety, and nuisance problem, and an associated coastal resource concern, associated with oversized vehicles (to which the City-approved project purports to be a solution) appears to be limited. Its evidence is also not explained in a way that would allow more detailed conclusions to be drawn from it as it relates to oversized vehicles as compared to non-oversized vehicles, daytime versus nighttime hours, and actual coastal resource

²⁰ If the same 90% ratio as is associated with the other calls is applied to the 2,500 police calls, and if RVs and motorhomes were presumed to be synonymous with oversized vehicles, then that that would mean that 10% of police calls, or 246 of the calls, could be attributable to oversized vehicles. Whether related to the calls or not, the City also indicates that the City Police Department tagged 294 recreational vehicles/motorhomes and towed about 12 of them, but it is not explained what they were tagged for (and what tagged means), why they were towed, and whether they all constituted oversized vehicles.

impacts.^{21,22} What does appear clear from the data, and especially from the numerous calls to various City departments, is that oversized vehicles raise concerns to some number of people. Granted, it is possible that many of the calls were about the same thing, and/or that many of the calls were from the same person or persons, and it is further possible that no actual public health, safety, or nuisance issues, or coastal resource concerns, were actually associated with all or any of the calls, but it is fair to suggest that there appears to be a concern of one type or another as regards oversized vehicles in the City of Santa Cruz. Of course, that number of calls needs to be tempered against the fact that there are over 60,000 residents in the City, and a visitor population that numbers in the millions over the course of a year, so it is also hard to derive more precise conclusions on that basis.

The City makes a clearer coastal zone planning and permitting argument when it observes that oversized vehicles may be being used for overnight camping in areas that the LCP does not identify for that use and are not equipped to handle it. Even then, the City here presumes that all oversized vehicles are being used in this way, as opposed to cases where the vehicles in question are simply parked overnight. And it is a relatively gray area as to when parking a vehicle, whether occupied or not, turns into 'camping', and the City has not to date clearly identified the cases where camping is occurring of the type that might raise a concern that people are actually camping where not allowed and/or in areas ill-equipped to handle it (e.g., setting up space outside of vehicles for recreating, cooking, sitting, etc.).²³

Despite the lack of clear problem identification, ultimately, the public access question before the Commission in this appeal is actually rather simple. Namely, how will the program affect the public's ability to access and recreate in the coastal zone. In this case, the first important point is that the restriction in question would apply at nighttime, between the hours of midnight and 5am. The City did not present any evidence on the amount of public access that is occurring at that time in the City's coastal zone, and for which public parking might be necessary, but the Commission believes that it is fair to presume that there is simply not a lot of public access occurring between midnight and 5am. While there are always a few people that avail themselves of nighttime beach walks, or West Cliff Drive walks, or surfing, or fishing, or other public access pursuits at night, the number of such access users during those nighttime hours are dwarfed by daytime users, and are dwarfed to such an extent that it is simply an extremely limited

²¹ And the Commission notes that this lack of clear and documented problem definition was one of the same issues affecting the City's previous oversized vehicle program from 2015 that was appealed to the Commission and ultimately abandoned in favor of this current program on appeal now.

²² The lack of adequate documentation of a problem to support the City's action is one of the five main appeal contentions (see summary of appeal contentions above, and see appeals in Exhibit 4).

²³ Ultimately, this aspect of the City's argument bleeds into what has been the core of the issues surrounding proposed oversized vehicle restrictions like this, both in the City of Santa Cruz as well as statewide, and namely the manner in which such a program affects the City's unsheltered community. As discussed further in the environmental justice section of this report, the unsheltered community qualifies as environmental justice community to which the Commission's Environmental Justice Policy and the Coastal Act's environmental justice provisions apply. That section provides more detail on these points, whereas this section is focused directly on the public access effects of the program.

number of users at all.²⁴ Thus, the City-approved parking restrictions and related program elements would affect very few public access users.²⁵

In addition, the City-approved project does not affect all such nighttime access users, but rather only such users that arrive in oversized vehicles and that cannot find parking anywhere else but on City streets, in City rights-of-way, and/or City parking lots. The City does not provide any clear data on the number of such users that might fall into this category, but, again, if the number of nighttime public access users overall is extremely limited, as described above, then it is also reasonable to presume that the subset that might arrive and need such parking via an oversized vehicle is even more limited. In other words, it is simply a very small number of coastal public access users that might be affected by the City's program. To be clear, however, the users that are affected would be affected in a fairly profound way, inasmuch as their choice of vehicle would mean that they cannot park on City streets, rights-of-way, or parking lots in order to access the City's coastal zone between midnight and 5am.²⁶ Still, while not to date well quantified, the analysis above would suggest that a very small number of nighttime access users would be affected.

In conclusion, it would appear that very few coastal access users would be impacted by the City-approved program. However, that is a separate question than whether the project has maximized public recreational access opportunities as required by the Coastal Act and the LCP.²⁷ Arguably, the City-approved parking restrictions and related project elements do not help to maximize such opportunities, and such opportunities are actually reduced, albeit marginally, given the degree of such nighttime use. And the City has not connected the analytic dots that would suggest that nighttime overnight oversized vehicle parking is leading to significant adverse coastal resource impacts, nor does the City demonstrate that it need not maximize access due to the need to restrict

²⁴ And the Commission has made similar findings as it relates to nighttime public access use in the City of Santa Cruz in multiple Commission-approved CDP cases that are relevant here (including the aforementioned West Cliff Drive nighttime parking restrictions CDP approved in 2008 (CDP A-3-STC-07-057) in terms of the period from midnight to 5am, and the City's Beach Management Plan CDP approved in 2020 (CDP 3-20-0088) in terms of the time period from midnight to one-hour before sunrise), and relies on those cases and findings as evidence applied to this case.

²⁵ And the Commission here does not equate sleeping in one's oversized vehicle between midnight and 5am to be a public access and recreational pursuit of the type envisioned by the Coastal Act and the LCP. Nor does the Commission equate such use with lower cost overnight accommodations, both because the Commission has not historically interpreted on-street parking as overnight accommodations, and because the Commission has typically found that the high cost of entry into the oversized vehicle market means that it is inherently not a lower cost form of accommodation (e.g., RV parking spaces in a campground generally don't qualify as a lower cost type of overnight accommodation even if priced in a manner that would otherwise constitute lower cost).

²⁶ And the City has not identified where the CDP's alternative 'safe parking' program nighttime spaces would be located, and thus it is difficult to determine how well-located they might be to satisfy nighttime public access. Sites discussed in the past have been miles from the coast and outside of the coastal zone where they would not be conducive to facilitating such public access. In addition, the resident and hotel/motel permits are also unlikely to significantly affect this conclusion either.

²⁷ And one of the five main appeal contentions, and really the overarching public access appeal contention, is that the City's CDP does not adequately maximize such opportunities as required (see summary of appeal contentions above, and see appeals in Exhibit 4).

the ‘time, place, and manner’ of such access. However, at the substantial issue phase of the appeal, the Commission is not tasked with making Coastal Act or LCP consistency findings. On the contrary, the Commission is tasked with evaluating the City’s action to understand whether it raises a substantial issue in terms of such consistency. The Commission has some discretion on whether to take jurisdiction over CDP applications in appeal cases.²⁸ And in fact the Commission has on certain occasions found that local government decisions do not raise a substantial issue even when they are not consistent with the LCP for a variety of reasons.²⁹ Here, although access opportunities are not maximized, the CDP has a very limited impact on coastal public access. Thus, the Commission exercises its discretion to find that the City’s CDP action does not raise a substantial public access issue, and declines to take jurisdiction over the CDP application on that basis.

2. Environmental Justice

Applicable Coastal Act

The Coastal Act explicitly identifies the need to ensure equality and environmental justice, and allows the Commission to consider coastal resource issues and impacts through that lens in appeal cases, like this, even if the LCP itself may be silent on such issues. The Coastal Act states:

Section 30013. *The Legislature further finds and declares that in order to advance the principles of environmental justice and equality, subdivision (a) of Section 11135 of the Government Code and subdivision (e) of Section 65040.12 of the Government Code apply to the commission and all public agencies implementing the provisions of this division. As required by Section 11135 of the Government Code, no person in the State of California, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, shall be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination, under any program or activity that is conducted, operated, or administered pursuant to this division, is funded directly by the state for purposes of this division, or receives any financial assistance from the state pursuant to this division.*

Section 30107.3. *(a) “Environmental justice” means the fair treatment and meaningful involvement of people of all races, cultures, and incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. (b) “Environmental justice” includes, but is not limited to, all of the following:*

²⁸ And when the Commission does find a substantial issue, and it takes jurisdiction over the CDP application, then, although the Commission continues to retain its discretion to approve, approve with conditions, or to deny a CDP, either form of approval requires the Commission to find the development in question LCP (and Coastal Act, as applicable) consistent. In other words, the standards at the substantial issue phase versus the potential de novo phase of an appeal are different, where the Commission must find LCP (and Coastal Act, as applicable) consistency only in the case of the latter.

²⁹ See, for example, Appeal Numbers A-3-SCO-16-0069 (Verizon), A-3-SCO-17-0037 (Britt SFD), A-2-SON-20-0042 (Chapman), and A-2-SON-22-0015 (Chang).

(1) The availability of a healthy environment for all people.

(2) The deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities.

(3) Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision making process.

(4) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.

Section 30604(h). *When acting on a coastal development permit, the issuing agency, or the Commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.*

To implement its Coastal Act environmental justice authority, the Commission adopted an Environmental Justice Policy (“EJ Policy”) to guide and inform its decisions and procedures in a manner that is consistent with the provisions in, and furthers the goals of, Chapter 3 of the Coastal Act and certified LCPs. The EJ Policy further articulates environmental justice concepts, including stating:

The term “environmental justice” is currently understood to include both substantive and procedural rights, meaning that in addition to the equitable distribution of environmental benefits, underserved communities also deserve equitable access to the process where significant environmental and land use decisions are made.

Thus, the Commission’s EJ Policy underscores the importance of both substance (i.e., evaluating whether projects do or do not disproportionately distribute environmental benefits and burdens) and process (i.e., ensuring that those potentially affected by proposed development have an equitable opportunity to participate in a transparent public process).

Analysis

To date, the key area of controversy associated with the City-approved project has not been about public recreational access per se (as discussed in the previous section), but rather about the impacts that the City-approved parking restrictions will have on unsheltered individuals who use oversized vehicles as a place to sleep overnight. The primary substantive concern identified is that while the midnight to 5am oversized vehicle parking restriction would apply equally to all persons attempting to park in the City’s coastal zone during that time period, it may disproportionately impact unsheltered individuals who sleep at night in their oversized vehicles. This could represent a potential environmental justice issue that the Commission needs to also take into

consideration, including to ensure that this unsheltered community had access to the City's CDP consideration processes and the Commission's appeal process to make their views known and to help shape the debate on potential decisions, and ultimately to assess whether such decisions equitably address and distribute coastal resource impacts and enhancements for all, including the unsheltered community.³⁰ Here, Appellants contend that the City-approved project would disproportionately affect unsheltered individuals that use oversized vehicles as a place to sleep; that the project does not adequately account for the number of such individuals nor their needs; and that project enforcement would essentially criminalize the act of sleeping in an oversized vehicle.

Identifying Environmental Justice Communities

The first step in this environmental justice analysis is to determine whether unsheltered individuals that use an oversized vehicle as a place to sleep at night constitute an "environmental justice" community to which the Coastal Act's environmental justice provisions and the Commission's EJ Policy apply. If so, the next step is to identify to what extent the City-approved project may adversely and disproportionately affect those individuals. In answering these questions, the Commission's consideration necessarily focuses on how the project's coastal resource impacts may disproportionately affect such individuals compared to others affected by the project.³¹ The Commission is also tasked with ensuring that communities of concern can access the process to make their views known and to help shape the debate on potential Commission decisions.

Based on the evaluation criteria set forth above, the Commission finds that unsheltered individuals³² that use an oversized vehicle as a place to sleep at night is in fact an environmental justice community. The Coastal Act's definition of environmental justice

³⁰ And one of the five main appeal contentions is framed as an environmental justice concern; specifically that the approved project unfairly limits access to the coast for low-income people, people of color, and those with disabilities. In addition, and related, another of the appeal contentions refers to protecting "sensitive coastal resource areas" (referring to Coastal Act Section 30116) associated with housing for low-income persons using their vehicles for shelter (see summary of appeal contentions above, and see appeals in Exhibit 4). On the latter, the Appellants misunderstand the applicability of Section 30116. Namely, that section allows for local governments to identify such sensitive coastal resource areas in their LCPs, where City CDP actions in such areas would be appealable to the Commission (per Section 30603(a)(3)). Here, the City's LCP does not include identification of same, and thus this allegation does not hold any special relevance for this appeal. Even if it did, the relevant issue, namely the use of oversized vehicles as a place of shelter, is adequately covered through the lens of the environmental justice allegations.

³¹ This focus derives from the fact that the Coastal Commission is a coastal management agency charged with the protection and enhancement of the State's coastal resources. Thus, the Commission's review of environmental justice issues is necessarily rooted in its evaluation of coastal resource benefits and burdens, as opposed to non-coastal resource issues, such as broader societal issues associated with public health and general welfare, which are the purview of other government agencies and entities.

³² According to the U.S. Department of Housing and Urban Development, people experiencing homelessness may have access to shelter or may be considered "unsheltered" if their primary nighttime residence is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground. The analysis in this report focuses on unsheltered individuals who sleep in oversized vehicles at night.

as set forth in Section 30107.3 above commits the Commission to the fair treatment and meaningful involvement of people of all “races, cultures, and incomes ... with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” Unsheltered individuals that use an oversized vehicle as a place to sleep at night can generally be classified as a lower income segment of the population that are acutely struggling to attain some of society’s most basic needs, such as safe housing, making them particularly vulnerable to outside environmental hazards. Although disaggregated data for unsheltered individuals living in an oversized vehicle does not appear to exist, people of color tend to make up a much higher percentage of the overall unsheltered population, particularly African Americans (who statewide make up nearly 40 percent of the unsheltered population but represent only 6.5 percent of the general population).³³ In Santa Cruz, African Americans have been estimated to make up about 8% of the unsheltered population by race, while only accounting for 2.1% of the population in Santa Cruz.^{34,35} And finally, Commission staff consulted a number of environmental justice experts in California who uniformly advised that, based on the characteristics of this vulnerable population, the unsheltered individuals that use an oversized vehicle as a place to sleep at night definitely qualify as an environmental justice community. Thus, the Commission here finds that such unsheltered individuals, in this case those who sleep in oversized vehicles at night, qualify as an environmental justice community to which the Coastal Act’s environmental justice provisions and the Commission’s EJ Policy apply.

Potential Environmental Justice Concerns

As discussed above, the Commission’s environmental justice analysis is two-pronged, and refers to both potential procedural and substantive concerns. In terms of the former, the City provided an open and inclusive public forum for interested parties, including local and broader unsheltered advocacy groups and stakeholders, to participate. The City conducted six City public hearings, including local appeals by individuals and groups to the City Planning Commission and to the City Council. That process provided an effective means for all parties to participate, as also evidenced subsequently by the Appellants availing themselves of the right to appeal the City’s CDP decision to the Commission. And the Commission’s process has likewise been open and transparent, and Commission staff has maintained open lines of communication with all engaged parties, including ultimately in terms of the notice and outreach associated with this report and the Commission hearing scheduled to take place on July 14, 2022.

³³ As detailed by the U.S. Department of Housing and Urban Development in its 2019 Annual Homeless Assessment Report to Congress.

³⁴ See U.S. Census Bureau QuickFacts: Santa Cruz City, California.

³⁵ Santa Cruz County regularly conducts what is known as a “point-in-time” count of unsheltered individuals, the last of which occurred between 430am and 10am on January 31, 2019, where 2,167 individuals were identified Countywide, and 1,197 in the City of Santa Cruz (“Santa Cruz County Homeless Census & Survey Comprehensive Report 2019”, by Applied Survey Research). Of those individuals, 399 were further surveyed in terms of race and ethnicity, where the racial breakdown was 67% white, 14% multi-racial, 10% Native American or Native Alaskan, and 8% black, and where 33% separately identified as Latinx/Hispanic.

In terms of substantive concerns, the question turns on whether the City-approved project would have disproportionate adverse coastal resource impacts, here in terms of public access opportunities, for the identified environmental justice community. As discussed in the previous section, the overall public access impact is relatively small, but the question here relates to who would be bearing that impact. All users of oversized vehicles trying to park between the hours of midnight and 5am in the City of Santa Cruz would be impacted by the approved project, but some would be more affected than others. Specifically, those who reside in dwelling units in the City and need to park an oversized vehicle overnight would be afforded permits to do so, as would hotel/motel guests,³⁶ but others would not, including unsheltered City residents. Unsheltered individuals that use an oversized vehicle as a place to sleep at night would be more affected by the reduction in City coastal zone access opportunities than would others in this respect.

The City suggests that this impact is mitigated by the proposed safe parking program and related elements. However, as described earlier, and according to the City, only 9 such overnight safe parking spaces are available now. The City indicates that another 46 spaces are covered by the City's CDP (for a total of 55 spaces), but it is not clear when they might come online. In addition, the City declined to identify the locations of the safe parking program in the CDP action, or since, and it is not clear where such spaces would be provided.³⁷ In sum, whether 9 spaces now or 55 spaces later, it is not clear from that data that the City's program will be enough to accommodate all who would require such alternative parking, and when such parking would actually be available. In addition, absent their clear identification through the City CDP, it is not clear where such parking facilities would be located, and whether those sites would necessarily be conducive to public access pursuits (e.g., sites discussed in the past have been miles from the coast and outside of the coastal zone). That is not to say that the City's proposed safe parking program is without value, and indeed it is a marked improvement from the City's previous iteration of this project from 2016,³⁸ and it would include complementary program elements that are also designed to provide support services for unsheltered individuals (e.g., case management support, access to services assistance, etc.). Although not part of the City's program, the City also notes that the Association of Faith Communities' (AFC) church parking program provides another 20

³⁶ And the lack of equal treatment in this respect is one of the five main appeal contentions (see summary of appeal contentions above, and see appeals in Exhibit 4).

³⁷ Two things are noted here. First, without identification of the specific locations, facilities, and nature of such operations, it is impossible to determine to what extent that aspect of the City's CDP action will lead to coastal resource impacts by itself. And second, one Appellant (Reginald Meisler) alleges that the City's action raises LCP issues on this point alone, as it gives the City authority to develop at its own discretion and in a manner that is not clearly identified in the LCP (see Exhibit 4). This is an LCP problem, to be sure, but at the same time the sites that the City has discussed in the past have generally been away from the coast and out of the coastal zone, where coastal issues would presumably be negligible. Also, even if located in the coastal zone, the program would authorize parking in these areas from 8pm to 8am, and, unless such parking was in prime visitor destination areas where it would usurp other parking during those times, which seems unlikely, it is not expected to raise significant coastal resource concerns.

³⁸ At that time, although the City was exploring the possibility of alternative parking for affected oversized vehicle users, it had not actually provided for any such areas as part of the program then being considered by the Commission.

parking spots in the City and an additional 25 spots in the County.³⁹ And the City states that oversized vehicles registered in the safe parking program would not be subject to fines and/or towing if the reason they were parked during midnight to 5am was because the program did not have any open safe parking spaces; however it is not clear from the City's materials as to how this aspect of the program would practically and logistically actually work.⁴⁰ Ultimately the City argues that its safe parking program adequately addresses those that would be displaced, although Appellants disagree with that conclusion.⁴¹

Given the limitations on the City's supporting data and the proposed safe parking program itself, it is difficult to say with certainty one way or another whether all who would be displaced by the midnight to 5am parking restriction would be able to be accommodated by the City's safe parking program. Either way it is also clear that the program presents certain practical challenges, including that because the parking program would be operated from 8pm to 8am, users must move in and out of the lot daily. This could potentially present a problem for lower income oversized vehicle owners who cannot afford gas to move their vehicles every day, including because such vehicles themselves tend to be less fuel efficient than most standard vehicles. This problem is considerably prominent during the time of this report, when skyrocketing gas prices are affecting the entire nation, and particularly California.⁴² In addition, some oversized vehicles targeted by the program may not be fully operational, adding another layer of complexity.

Appellants argue ultimately that the City-approved project would effectively criminalize the act of sleeping at night in an oversized vehicle, where the fine for violating the program would be a \$50 parking citation – each time. And although there may be some that can absorb a \$50 fine or a series of such fines, it seems clear that the affected

³⁹ AFC refers to its program as the "Safe Spaces Parking Program," and hosts free overnight vehicle stays for unsheltered individuals that sleep in their vehicles.

⁴⁰ And it would require that a user has registered with the program in any case.

⁴¹ The same aforementioned Santa Cruz County "point-in-time" count from 2019 included asking 399 individuals (out of 2,167 total) where they stayed the night of the count, and 15% said they stayed in a car, van, RV, or camper that night. Although not a perfect extrapolation, including because the 399 interviewees may not have been a statistically valid sample, 15% applied to 2,167 equates to 325 persons who may have stayed in a car, van, RV, or camper that night in Santa Cruz County. Given that it is not clear whether all or none of them may have been in an oversized vehicle, or to what degree multiple individuals may have been sharing vehicles, that is not to say that there is a population of 325 oversized vehicle users (or, when applied to the 1,197 individuals in the City alone, 180), rather it is to provide a sense of the relative magnitude of unsheltered individuals that might sleep in a vehicle overall. Bracketing the methodological challenges to framing these types of numbers, nine spaces now, or even 55 spaces at some future date, are significantly less than 180 spaces. And the City has actually identified what it says are 110 oversized vehicles utilizing City streets and rights-of-ways at the current time, which, if accurate, is double what the program might be able to accommodate at full implementation, and more than ten times the demand than can be accommodated by the nine spaces the City indicates are currently available. And Appellants suggest that even these figures may be an undercount and the unsheltered population that sleep in their vehicles at night may be even higher.

⁴² The average price of a gallon of regular unleaded gas in California as of the date of this report was \$6.36 (see <https://gasprices.aaa.com/state-gas-price-averages/>), with the average for a premium gallon of unleaded gas at \$6.70, and the average for a gallon of diesel fuel at \$6.99.

population here would be disproportionately and regressively affected by such fines. The City asserts that these kinds of impacts are mitigated by the aforementioned exemption should there be a lack of safe parking spaces available at night, and an exemption for mechanical breakdown. However, the actual parameters of these program elements and their implementation lack explicit detail in the City's CDP, and it is not clear how – and whether – parked oversized vehicles at night might escape such fines. To this point the City has stated that its intent is to avoid these kinds of fines and penalties, including through communication between City officials, parking program managers, the police, and the community so as to not unfairly ticket and/or tow oversized vehicles, and that the program would include significant outreach on all of these points, but again there is little actual detail in the permitted program on these points.

Thus, under the Commission's environmental justice evaluation, it would appear that the City's program would disproportionately affect unsheltered individuals that use an oversized vehicle as a place to sleep at night. This is perhaps clearest in terms of the special treatment afforded others with a need to park an oversized vehicle during the restricted midnight to 5am hours who might reside in a dwelling unit in the City, or that might be staying at a hotel or motel in the City. It also clearly manifests itself in terms of the lack of detailed identification of the number of oversized vehicle users that might need access to a safe parking program, and thus whether the program can adequately help such users that would be displaced (and, if not, the effect on those not otherwise able to be accommodated). And it is also clear from the lack of precision as it relates to project elements, some of which appear to be in flux (like additional safe parking spaces, and even the location of safe parking sites at all), and others of which simply lack implementation detail. At the same time, it is clear that the City has provided a much more robust program than it did in 2016, and it is likewise clear that the City has stated that it is its intention to make the program better over time (even if the ways in which such potential future program improvements should be considered a part of its action being evaluated here are less clear, as they are not part of the CDP action appealed to the Commission).

Ultimately, these environmental justice issues amplify the public access issues (limited as they are, as detailed in the previous section), but such issues do not rise to the level of a substantial issue in terms of LCP consistency or Coastal Act public access consistency, the legal standard of review for this appeal. In making such a finding, the Commission is not indifferent or callous in its evaluation of the issues affecting those who might need to sleep in their vehicles at night in Santa Cruz. On the contrary, such an outcome is a terrible and tragic circumstance, and an issue of concern not only in Santa Cruz, but also in other coastal communities and to all who enjoy the State's coastal zone. However, such situations are a function of other societal issues, and not so much an issue of impeded public access, and frankly fall outside the purview of the Commission's coastal resource protection mandates. In fact, much of the crises facing the unsheltered community that use their vehicles (oversized or not) to sleep at night relate to broader social services and socioeconomic conditions that are better addressed by local governments and other applicable agencies under their power to regulate for public health, safety, and welfare. The Commission strongly supports local governments and other agency partners in finding solutions to these kinds of problems,

but the ability of the Commission to offset consequences due to non-coastal resource concerns is simply beyond this agency's authority.

3. Conclusion

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP and/or Coastal Act public access 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 such a substantial issue (and, as indicated previously, is not tasked with making Coastal Act or LCP consistency findings). And as explained above, the Commission has in the past relied on the following five factors in its decision of whether the issues raised in a given case are "substantial" or not: the degree of factual and legal support for the local government's decision; the extent and scope of the development approved by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well. In this case, these five factors, considered together, support a conclusion that this project does not raise a substantial issue.

With respect to the degree of factual and legal support for the City's decision, it does not appear that the City has created a compelling record that would suggest that such a program is necessary for some coastal resource concern or issue or that it maximizes public access. Instead, the City bases its actions here in terms of public safety, public health and public nuisance. However, even the data identifying that problem is not particularly clear. Given the lack of factual and legal support for the project's consistency with the LCP and Coastal Act, the first factor weighs in favor of a finding of substantial issue.

As to the scope of the approved development, it is limited. It only applies to oversized vehicles parking in the coastal zone between the hours of midnight and 5am, which is not a time of significant public access pursuits in the City of Santa Cruz. Thus, the second factor weighs heavily towards no substantial issue.

In terms of the significance of the coastal resources affected by the City's decision, public access and recreation on the coast are paramount concerns of both the Coastal Act and the LCP. However, for the reasons explained above, the ordinance will have minimal impact on public access, which argues for no substantial issue.

Regarding the precedential value of the City's decision for future interpretations of its LCP, although not well supported, which is an issue, the City did not stake out unusual or potentially precedential positions in its action. This factor supports a no substantial issue finding.

Finally as to whether the appeal raises issues of local versus regional/statewide significance, the issues raised are of statewide concern related to unsheltered

individuals, to be sure, but not so much statewide concerns attributable to coastal resources. The fifth factor weighs in favor of no substantial issue.

Taken together, and for the reasons stated above, the Commission finds that Appeal Number A-3-STC-22-0018 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.

3. APPENDICES

A. Substantive File Documents⁴³

- Commission CDP Files for A-3-STC-07-057 (West Cliff Drive Parking Restrictions) and 3-20-0088 (Beach Management Plan)
- Exhibit 4 (1-5-2022 ZA Meeting Agenda Report with Attachments) and Exhibit 5 (3-3-2022 Planning Commission Staff Report with Attachments) from the City of Santa Cruz Letter dated 6.23.2022

B. Staff Contacts with Agencies and Groups

- City of Santa Cruz Planning and Community Development Department
- American Civil Liberties Union
- Santa Cruz Cares

⁴³ These documents are available for review from the Commission's Central Coast District office.