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 Staff: Esme Wahl - SC
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STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number: A-3-SLO-22-0024

Applicant: Pacific Cambria LLC

Appellant: Joseph Mark Hough, Russel Read, and Claudia Harmen Worthen

Local Government: San Luis Obispo County

Local Decision: County coastal development permit application number DRC2021-0042 approved by the San Luis Obispo County Board of Supervisors (on local appeal) on May 3, 2022.

Project Location: Cambria Pines Lodge and Cambria Nursery located at 2905 Burton Drive and 2801 Eton Drive (APNs 023-431-003 and 013-151-035) in the unincorporated community of Cambria in San Luis Obispo County.

Project Description: Two-year extension to the Cambria Christmas Market event permit to allow for market operations from 5:00 p.m. to 9:00 p.m. Wednesday through Sunday (and all of Christmas week) for a period not to exceed four weeks and up to the end of December. The market includes temporary lighting, seasonal displays, and concession stands.

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

San Luis Obispo County approved a coastal development permit (CDP) amendment to extend the authorization of the Cambria Christmas Market (Market), located at Cambria Pines Lodge and Cambria Nursery, for two additional years (through the end of 2023). The Cambria Christmas Market is a European-style festival-type event with concession stands, food, drinks, music, holiday lighting, and seasonal displays (including 26 temporary booths). The County's action would allow the Market to operate Wednesday through Sunday (and all of Christmas week) from 5 p.m. to 9 p.m. for four weeks for up to 3,000 guests per night and up to the end of December each year. The Market has occurred annually since 2013,¹ and it was initially approved by the Coastal Commission (for events in 2013 and 2014) and then by San Luis Obispo County for events since 2015.

The Appellants primarily contend that the approved project is inconsistent with San Luis Obispo County Local Coastal Program (LCP) provisions related to allowable uses, neighborhood character, water supply, creek ESHA, and noticing/hearing requirements. After reviewing the local record, staff does not believe that the County's CDP action raises a substantial issue with respect to the project's conformance with the County's LCP.

In terms of allowed uses, the LCP explicitly allows temporary events at Cambria Pines Lodge (even though it is within 1,000 feet of residential zoning) and explicitly allows for retail and visitor-serving use of the Cambria nursery (even though it is zoned 'Residential Suburban'). As to neighborhood character, the Market would be required to operate consistent with the approved on-site parking plan, offsite parking plan, lighting plan, and the pedestrian and traffic safety plan. These plans require the Market to shut down by 9 p.m. every night, require lights to be limited to the lowest branches of every other tree trunk, and require attendees to use a shuttle service which shuttles guests from six locations throughout Cambria to the Market using a specific route to avoid small neighborhood roads, among other conditions. All of these requirements will help ensure neighborhood compatibility. In terms of water supply, while it is true that Cambria lacks an adequate water supply to support new development without adversely affecting coastal resources, such as San Simeon and Santa Rosa creeks, vendors would truck in their own water, and restrooms would be self-contained (including trucking in water for hand wash sinks), and the event itself would not appear to have a

¹ Except for in 2020, when the Market was cancelled due to the Covid-19 pandemic.

high-water demand that would draw on these creek resources. Finally, in terms of hearing requirements, the County has provided evidence that it complied with the LCP's hearing and noticing requirements. In light of all of the above, staff does not believe that the project raises a substantial issue of LCP conformance.

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 application for this project. The single motion necessary to implement this recommendation is found on page 5 below.

TABLE OF CONTENTS

1. MOTION AND RESOLUTION 5

2. FINDINGS AND DECLARATIONS..... 5

 A. Project Description and Location 5

 B. San Luis Obispo County CDP Approval..... 6

 C. Appeal Procedures 6

 D. Summary of Appeal Contentions 8

 E. Substantial Issue Determination 8

 1. Allowed Uses 8

 2. Neighborhood Compatibility 11

 3. Water Availability 17

 4. Hearing Requirements..... 19

 5. Conclusion..... 20

6. APPENDICES..... 21

 A. Staff Contacts with Agencies and Groups..... 21

EXHIBITS

- Exhibit 1 – Project Site Map
- Exhibit 2 – Project Site Images
- Exhibit 3 – Approved Project Conditions
- Exhibit 4 – County Final Local CDP Action Notice
- Exhibit 5 – Appeals of County CDP Decision
- Exhibit 6 – LCP Table “O”
- Exhibit 7 – ESHA Maps
- Exhibit 8 – Noise Study
- Exhibit 9 – County Letter re: Hearing Notice

CORRESPONDENCE

1. MOTION AND RESOLUTION

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

Motion: *I move that the Commission determine that Appeal Number A-3-SLO-22-0024 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-SLO-22-0024 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 County-approved project provides for a temporary Christmas market located primarily at Cambria Pines Lodge with additional market operations entailing normal Nursery sales, Christmas tree and wreath sales, and holidays gift and vendor booth sales located at the adjacent Cambria Nursery. The market itself is located at 2905 Burton Drive, and the associated market operations at the Cambria Nursery are located at 2801 Eton Drive, all within the unincorporated community of Cambria. Cambria Pines Lodge occupies a 26-acre parcel on the east side of Highway 1 in the LCP's Recreation land use category in Cambria's 'Lodge Hill' area, and Cambria Nursery occupies a 4.5-acre parcel located adjacent to Cambria Pines Lodge that is designated by the LCP as Residential Suburban. Both properties are located within Monterey pine forest, which is not atypical for much of Cambria, which is considered terrestrial ESHA under the LCP. There is a large swath of undisturbed and contiguous Monterey pine forest surrounding the properties to the north and east, however the site of the Market is within an already disturbed area of Monterey pine forest, and the Market itself would not be allowed within the intact area of Monterey pine forest.

The County-approved project extends a prior CDP authorization for a "European-style" Christmas market to take place for up to four weeks during the holiday season through 2023. The market consists of twenty-six temporary booths (8 feet by 10 feet with a maximum height of 9 feet) as well as concession stands, temporary lighting, and

seasonal displays, all of which would operate at most Wednesday through Sunday (and all of Christmas week) from 5:00 p.m. to 9:00 p.m. until December 31, 2023. Following completion of Market activities for the year, all temporary booths would be dismantled and removed from the area and stored off-site, and the area restored to its previous configuration. The Market has been operating in this location and roughly in this form since 2013 pursuant to Coastal Commission-issued CDP authorizations (CDP A-3-SLO-01-122-A4 and -A5) in 2013 and 2014, and pursuant to a County-issued CDP (CDP DRC2015-00096) starting in 2015.² The current action on appeal would extend the County CDP authorization through the 2022 and 2023 holiday seasons (and until December 31, 2023).

See **Exhibit 1** for a location map, see **Exhibit 2** for photographs of the site and surrounding area, and see **Exhibit 3** for the approved project conditions.

B. San Luis Obispo County CDP Approval

On October 7, 2021, the San Luis Obispo County Planning Department heard a CDP for the proposed one-year extension to DRC2015-00096; however, the item was continued due to technical issues with the hearing's live stream audio. On October 22, 2021, the item was re-heard, and the Planning Department approved the Christmas Market extension for one-year, to allow for Market operations in 2022. The Planning Department approval was appealed (by the current Appellants before the Commission in this appeal action) to the Board of Supervisors which, after deliberation, upheld the approval with conditions, and ultimately extended the authorization for an additional year through the end of 2023 (i.e., thus authorizing events in 2022 and 2023). The Coastal Commission's Central District Office received the County's Final Local CDP Action Notice (see **Exhibit 4**) on May 16, 2022, and the Coastal Commission's ten-working-day appeal period for this action began on May 17, 2022 and concluded at 5 p.m. on May 31, 2022. The Commission received three valid appeals of the County's CDP action (discussed below and shown in Exhibit 5) during the appeal period.

C. Appeal Procedures

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

² Project applicants, County staff, Commission staff, and other interested parties spent a great deal of time initially to circumscribe the event in such a way that it avoided on-site issues (such as ESHA) as well as accounting for off-site issues (such as remote parking and shuttles), and all of this was reflected in operating terms and conditions attributable to these CDPs. While the event has changed in some ways over time, it is arguably still the same event and subject to the same range of terms and conditions as were worked through for past events to address coastal resource concerns.

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 within an area that constitutes a sensitive coastal resource area under the LCP and because the proposed project is not the principally permitted use for the land use categories in question.

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. Here, although Commission staff requested such a waiver, the Applicant declined, and thus the Commission is subject to the 49-working day 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.³ 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,

³ 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..." (California Code of Regulations, Title 14, Section 13115(b)). Section 13115(c) of the Commission regulations 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.

persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

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

All three Appellants contend that the County-approved CDP raises LCP consistency questions relating to water availability and creek protection, and improper noticing requirements. Two of the Appellants additionally contend that County-approved LCP also raises LCP consistency questions relating to allowed uses and neighborhood compatibility. Specifically, the Appellants contend that the approved project would violate applicable LCP policies because: 1) temporary events are not an allowed use within 1,000 feet of the Residential Single Family land use category; 2) use of the Cambria Nursery for sales and parking is not allowed by the LCP; 3) the Market will encroach into the public road; 4) the outdoor lighting, noise, and traffic associated with the Market are not compatible with the neighborhood; 5) Cambria does not have an adequate water supply to support the water use associated with the Market; and 6) the Board of Supervisors decision to extend the Market for two years instead of one was not properly noticed. Please see **Exhibit 5** for the appeal contentions.

E. Substantial Issue Determination

1. Allowed Uses

Applicable LCP Provisions

The San Luis Obispo County LCP is divided geographically into four areas, each with its own LCP area plan to form one component of the Land Use Plan (LUP). The LUP also includes two documents that list policies applicable throughout the coastal zone: one titled the "Coastal Plan Policies" (Coastal Plan) and another the "Framework for Planning." The Implementation Plan consists of the "Coastal Zone Land Use Ordinance" (CZLUO) and Table O, which is also applicable throughout all four LCP areas. The subject property is located within the area governed by the North Coast Area Plan (NCAP).

The NCAP, which is part of the LUP, lays out objectives specific to Cambria and San Simeon. With respect to allowed uses at Cambria Pines Lodge and Cambria Nursery, the NCAP states:

NCAP Planning Area Standards, Policy 5: Cambria Pines Lodge.

*A. Limitation on Use. Principally Permitted uses are limited to Eating and Drinking Places (not including drive-in and fast-food restaurants, and refreshment stands), Food and Beverage Retail Sales (tourist-oriented), General Merchandise Stores (tourist-oriented), Hotels and Motels, and Bed and Breakfast Facilities. Non-Principally Permitted uses are limited to: Indoor Amusements & Recreation, Outdoor Recreation, **Temporary Events**, (when accessory to a Hotel or Motel), Public Safety Facilities, a Caretaker Residence, Public Assembly and Entertainment (when accessory to a Hotel or Motel), and uses permitted by the Cultural, Education, and Recreation use group (excluding Libraries and Museums, Schools and Social Service Organizations) in accordance with Coastal Table 'O', Part I of the Land Use Element. (This is a visitor-serving priority area.) (emphasis added)*

NCAP Planning Area Standards, Policy 2: Commercial Nursery.

The commercial nursery at Burton Drive and Schoolhouse Lane is an allowable use in accordance with Coastal Table 'O' provided that a rural, rather than commercial, ambience is maintained through site arrangement, building design, sales displays and signing design.

The IP consists of CZLUO and Table O. The intent of the IP is to carry out the policies of the LUP. CZLUO contains specific policies and Table O contains the allowable uses for each LCP land use category. The IP includes the following policies for temporary events:

CZLUO Section 23.08.248 – Temporary Events.

Where allowed as S-17 uses by the Land Use Element, temporary events are subject to the standards of this section. ...

b. Time limit: A temporary is to be held in a single location for no longer than 12 consecutive days, or four successive weekends, except where a different time limit is established by other applicable provisions of the County Code or through Minor Use Permit approval.

c. Location. The site of any temporary event other than public events and parades shall be located no closer than 1000 feet to any Residential Single Family land use category.

d. Site design standards. All temporary events are subject to the following standards...

(1) Access. Outdoor temporary events are to be provided a minimum of two unobstructed access points, each a minimum of 18 feet wide, from the event site to a publicly maintained road.

(2) Parking. Off-street parking is to be provided [for] private events as follows with such parking consisting at minimum, of an open area with a slope of 10 percent or less, at a ratio of 400 square feet per car, on a lot free of combustible material. (i) Seated spectator events. One parking space for each 12 square feet of seating area. (ii) Exhibit event. One parking space for each 75 square feet of exhibit area.

(3) Fire protection. Facilities to be provided as required by the County Fire Department.

(4) Water supply and sanitation. Facilities to be provided as required by the Health Department. ...

LCP Table O provides for the principally permitted and special uses that are allowed in various land use categories. Cambria Pines Lodge, where the ticketed Market activities take place, is within the LCP's "Recreation" land use category, which allows for several principally permitted uses, as well as a variety of special uses, including temporary events. Cambria Nursery, where some Market-related activities would occur, is within the LCP's "Residential Suburban" land use category, which allows for uses such as passive recreation and residential uses, and allows for such retail trade-related activities as retail eating and drinking places, retail food and beverage sales, and roadside stands. See **Exhibit 6** for Table O.

Analysis

Two of the Appellants contend that the approved project raises LCP consistency questions related to allowed uses because: 1) the event will be located within 1,000 feet of a Residential Single Family (RSF) land use category, which is not allowed according to CZLUO Section 23.08.248(c); and 2) the Cambria Nursery's Residential Suburban designation does not allow for temporary events.

With respect to the Residential Single Family allegations, Market activities at the Cambria Pines Lodge would be located approximately 300 to 400 feet away from adjacent RSF designated lands. As such, those portions of the project are not allowed by CZLUO Section 23.08.248(c). However, NCAP Planning Area Standard Policy 5 explicitly allows for temporary events at Cambria Pines Lodge, and it does not identify any relevant restrictions to such events, including related to the RSF land use category. In cases where LCP provisions might conflict, such as this, the LCP specifies that the area plan provisions, and here Policy 5, take precedence.⁴ And in fact, such events have occurred in this area since 2013 under the same LCP provisions, and the County-approved CDP is conditioned to avoid any significant impacts on surrounding RSF

⁴ See LCP Section NCAP Planning Area Standards, Policy 5: Cambria Pines Lodge on page 7-55 of the North Coast Area Plan.

properties,⁵ which also helps to achieve the Section 23.08.248(c) objective as relates to the prescribed buffer.

With respect to the Cambria Nursery Residential Suburban (RS) allegations, while it is true that Table O does not call out temporary events as an allowed use in the RS land use designation, NCAP Planning Area Standard Policy 2 explicitly allows for commercial use at the nursery, albeit provided a rural ambiance is maintained. Additionally, the Cambria Nursery does not require a ticket to the Market for entry, and it remains open to the public throughout the Christmas market for regular Nursery operations. Specifically, the Nursery is decorated with Christmas lights, sells Christmas trees and wreath material, and has a few vendors selling gifts, hot chocolate and cookies from folding tables. Finally, Table O does allow retail eating and drinking establishments, retail food and beverage sales, and roadside stands in RS. It does not appear that the event activities approved by the County would be inconsistent with NCAP Planning Area Standard Policy 2 and Table O.

Accordingly, the County's approval of a CDP for the proposed project does not raise a substantial issue of LCP conformance with respect to allowed uses.

2. Neighborhood Compatibility

Applicable LCP Provisions

The LCP includes multiple provisions intended to protect community and neighborhood character and compatibility, including in terms of lighting, noise, and parking requirements as applied to temporary events such as this. These include North Coast Area Plan provisions that establish general residential land use and community character goals which are listed below:

NCAP Introduction and Goals, Policy 6: Residential Land Uses.

Preserve and enhance the quality of residential areas by: ... B. Protecting residential areas from incompatible land uses and protecting the residential character of single-family areas. C. Preserving desirable neighborhood characteristics such as compatible uses, open views, yard areas, sense of scale, landscaping, pedestrian ways, and other amenities.

The CZLUO also identifies specific outdoor lighting regulations, noise regulations, and parking/circulation provisions for similar reasons, including:

CZLUO Section 23.04.320 Outdoor Lights.

The standards of this section are applicable to all outdoor night-lighting sources ... a. Illumination only: Outdoor lighting is to be used for the purpose of illumination only, and is not to be designed for or used as an advertising display... b. Light directed onto lot: Light sources are to be designed and adjusted to direct light away from any road or street, and away from any dwelling outside the ownership of the applicant. c. Minimization of light intensity: No light or glare shall be transmitted or reflected in such concentration or intensity as to

⁵ Such conditions include an on-site parking plan, an off-site parking and shuttle plan, a lighting plan, a pedestrian and traffic safety plan, noise standards, and condition compliance monitoring.

be detrimental or harmful to persons, or to interfere with the use of surrounding properties or streets. d. Light sources to be shielded:

(1) *Ground illuminating lights:* Any light source used for ground area illumination except incandescent lamps of 150 watts or less and light produced directly by the combustion of natural gas or other fuels, shall be shielded from above in such a manner that the edge of the shield is level with or below the lowest edge of the light source. Where any light source intended for ground illumination is located at a height greater than eight feet, the required shielding is to extend below the lowest edge of the light source a distance sufficient to block the light source from the view of any residential use within 1,000 feet of the light fixture.

(2) *Elevated feature illumination:* Where lights are used for the purpose of illuminating or accenting building walls, signs, flags, architectural features, or landscaping, the light source is to be shielded so as not to be directly visible from off-site.

e. *Height of light fixtures:* Free-standing outdoor lighting fixtures are not to exceed the height of the tallest building on the site. f. *Street Lighting:* Street lighting shall be designed to minimize light pollution by preventing the light from going beyond the horizontal plane at which the fixture is directed.

CZLUO Section 23.06.044a Exterior Noise Level Standards.

	Daytime (7:00 a.m. to 10:00 p.m.)	Nighttime ¹ (10:00 p.m. to 7:00 a.m.)
Hourly Equivalent Sound Level (Leq,dB)	50	45
Maximum level, dB	70	65

¹ = Applies only to uses that operate or are occupied during nighttime hours

CZLUO Section 23.04.166 Required Number of Parking Spaces.

All land uses requiring a permit under this Title shall be provided off-street parking spaces as follows: a. *Use of charts:* The charts in subsection c of this section determine the number of parking spaces required for each use of land, as follows: (1) *Uses not listed:* For uses not specifically listed in this subsection that do not have parking requirements set by Chapter 23.08 (Special Uses), the same parking and loading space is required as for the most similar use of equivalent intensity; except where a use not listed requires Development Plan approval, in which case the amount of parking and loading space required is to be as determined by the Planning Commission. ...

CZLUO Section 23.08.248(d)(2) Temporary Events. Site design standards. Parking.

All temporary events are subject to the following standards...: Off-street parking is to be provided [for] private events as follows with such parking consisting at

minimum, of an open area with a slope of 10 percent or less, at a ratio of 400 square feet per car, on a lot free of combustible material. (i) Seated spectator events. One parking space for each 12 square feet of seating area. (ii) Exhibit event. One parking space for each 75 square feet of exhibit area.

Analysis

The Appellants contend that the Market will encroach into the public road; that the outdoor lighting and noise generated from the event are not neighborhood compatible; and that traffic will affect neighborhood parking and circulation (see full appeal contentions in **Exhibit 5**).

The project includes conditions to address encroachment, lighting, noise, and traffic concerns. Additionally, the Market has been operating since 2013 without any major issues related to any of the above-mentioned neighborhood compatibility concerns, as demonstrated by the limited number of complaints received during the event, according to the Applicant. Further, because the Market is located on the eastern side of Highway 1 (approximately two miles from the nearest coastal accessway), Market-related traffic is not expected to impede and/or significantly adversely affect coastal access. Each of the neighborhood compatibility contentions are explained in more detail below.

Encroachment

The Appellants contend that the Market encroaches onto the public road without a permit, and that the event's outdoor storage and storage of mechanical equipment is visible from Yorkshire Road and Patterson Place. The Appellants further contend that the Market's employees stop cars on Burton Drive and Eton Road to shepherd visitors to the Lodge and Nursery grounds, and that this stoppage of cars on public roads is an encroachment.

Although activities caused by the Market, such as traffic control, might occasionally take place in the public right of way these minor and temporary encroachments are not prohibited by any specific LCP policies. In addition, the CDP is conditioned to require the Applicant to secure an encroachment permit from the Department of Public Works for any encroachments into public right-of-way, and to post a cash damage bond to install improvements within the public right-of-way in accordance with the County's Public Improvement Standards.⁶ Thus, such event activities do not conflict with the LCP and are subject to further regulation by the County.

In terms of the allegation that Market employees are intentionally stopping unrelated traffic on Burton Drive and Eton Road, the appellants have not provided evidence that such activity has occurred or that this activity makes the overall event incompatible with the neighborhood. In addition, to help minimize and mitigate for the event's traffic impacts, the event includes off-site remote parking and a shuttle service, as well as a traffic control plan, all of which is required by the County's CDP (see Condition 15 on page 13 of **Exhibit 4**), ensuring that the project is compatible with the neighborhood. Additionally, traffic from this event would not likely rise to the level of a significant impact

⁶ The traffic control plan includes widening Burton Drive and construction of a new site access driveway on Yorkshire Drive.

on coastal resources, including public access, since the event is nearly two miles from the coastline and landward of Highway 1. The event also takes place during the winter months when fewer members of the public visit the area, as opposed to the summer months which attract more visitors and therefore there are more public access concerns.

For all of these reasons, these contentions do not rise to the level of a substantial LCP conformance issue.

Lighting

Two of the Appellants contend that the outdoor lighting associated with the event is not compatible with the neighborhood and is not in compliance with CZLUO Section 23.04.320 because the lights are as tall as the tallest building on-site, are visible from nearby streets, visible from local residences, and the Market would not minimize intensity of light. Additionally, two Appellants contend that the temporary electrical lines are a fire hazard.

These Appellants' contentions are incorrect for the following reasons: 1) the CDP requires all lighting to be consistent with CZLUO Section 23.04.320 (see page 2 of Exhibit 3), 2) Only freestanding outdoor light fixtures are required to be no taller than the tallest building on site (CZLUO Section 23.04.320) and that is not the type of lighting the applicant proposed 3) the LCP requires that lighting be directed away from nearby streets and residence, and not, as the Appellants argue, that it not be visible from nearby streets and residences, 4) the standard for minimizing intensity of lighting is specified in Section 23.04.320, and intensity needs to be kept below a level that would be harmful to people, or below a level that would interfere with use of surrounding properties or streets, and there is no evidence in the record to suggest that either of those thresholds are met, 5) the CDP explicitly requires all lighting associated with the Market to be turned off at 9 p.m. which will help minimize light intensity (see page 2 of Exhibit 3), and 6) the Applicant must obtain final inspection and approval from Cambria CSD Fire Department for all required fire and life safety measures (see Condition 21 of Exhibit 3). Therefore, the lighting, as proposed and conditioned, is consistent with the LCP, and none of these allegations raise substantial issues of LCP conformance.

In addition, all relevant parties went through considerable effort when the event was originated and originally permitted to properly condition event lighting to protect coastal resources, including to protect nearby Monterey pine forest and related habitats, and to protect the residential character of the neighborhood as much as possible. In terms of the former, when the Market event was first proposed in 2013, the Commission raised concerns related to the potential adverse effects the Market lighting displays could have on the adjacent Monterey pine forest, which is considered ESHA under the LCP. The Commission developed a lighting plan, described above, which the Market has implemented every year since 2013 to address ESHA concerns. There is no evidence in the record that the Market's lighting has had an adverse impact on ESHA. The current approval would operate under essentially that same lighting plan, under which the event has operated since 2013. In addition, the current project largely maintains other lighting parameters as well, including: 1) limiting lights to the lowest branches of every other tree; 2) requiring all temporary lighting associated with the Market be turned off every

night at 9 p.m.; 3) prohibiting lighting displays in ESHA; and 4) requiring all lighting to comply with CZLUO Section 23.04.320 (including specifically minimizing the lighting and glare from the event and requiring the lights to be no taller than the tallest building).

For all of these reasons, the County-approved project does not raise a substantial issue in terms of lighting.

Noise

Two Appellants contend that the noise generated from the event is not compatible with the neighborhood, and not in compliance with CZLUO Section 23.06.044a. Specifically, these two Appellants contend that many neighbors have complained about noise from the event and conclude that the event is most likely emitting noise at levels higher than the required 45 dB. The Appellants request that a noise level study be conducted. The County code does not contain a specific noise standard for temporary events, however CZLUO Section 23.06.040 does set exterior noise level standards. Specifically, continuous outdoor noise levels must remain under 50 dB and the maximum allowed noise level cannot exceed 70 dB.⁷ In 2016, the Applicant conducted a noise study that concluded that noise levels from the Market (which include both music and general crowd noise) did not exceed 45 dB of continuous noise (see **Exhibit 8**). Thus the Market-related noise levels measured in this study are within the levels allowed by the LCP. Additionally, the permit is subject to County development review inspection and condition compliance monitoring, where County Code Enforcement will check that the Applicant meets all conditions 15 days prior to the event, during the event, and 30 days after the conclusion of the event. If the Applicant fails to meet the permit conditions, it could result in revocation of the CDP. Accordingly, the County-approved CDP includes adequate terms and conditions to ensure that noise levels do not exceed LCP-allowed noise levels, and this contention does not raise a substantial issue.

Parking/Circulation

The Appellants claim that the Market is inconsistent with CZLUO Section 23.08.142a(3), which requires adequate parking for employees and customers associated with outdoor retail sales. The Appellants contend that the use of six off-site parking lots do not provide adequate event parking, and that offsite lots with shuttle use does not satisfy the requirement that parking be provided onsite or on an adjoining property.

CZLUO Section 23.08.142a(3), to which the Appellants cite, is for “outdoor retail sales” and does not apply to the Christmas Market which is a “temporary event”. In fact, CZLUO Section 23.08.248 (cited above) is the appropriate CZLUO section and it states parking requirements for temporary events. Under that section, the Market would be considered an “exhibit event”, which means that it would require one parking space per 75 square feet of exhibit area. In this case, the Market occupies approximately 130,680 square feet (including the walkway between the Lodge and Nursery), which equates to

⁷ For reference below 50 dB is often referred to as “soft” noise, such as a quiet library (40 dB) or a whisper (30 dB). And below 70 dB is often referred to as “moderate” noise, such as a normal conversation or a dishwasher (60 dB) or moderate rainfall (50 dB). “Loud” noises are at or above 70 dB, such as alarm clocks (80 dB). See https://audiology-web.s3.amazonaws.com/migrated/NoiseChart_Poster-%208.5x11.pdf_5399b289427535.32730330.pdf.

1,742 parking spaces. The parking and traffic control plan, which the applicant has been implemented since the County approved the event in 2015, provides for 355 on-site parking spaces (reserved for resort guests, disabled attendees, resort employees, and market vendors) and 562 off-site parking spaces in six different off-site parking lots around Cambria (all serviced by an event shuttle); a total of 917 parking spaces. While it is true that the LCP specifies 1,742 parking spaces, the Applicant's parking analysis estimated that of the maximum 3,000 guests allowed per night, there are no more than 2,000 guests attending the Market at a given time, assuming each guest stays no more than around 2 hours. It is further estimated that each car brings three guests given the family-oriented nature of the event. Therefore, the analysis concludes that 667 cars would require event parking at a given time to account for the 2,000 people at a time, and the event provides nearly 250 parking spaces in excess of this to address uncertainties.

Additionally, in order to maintain safe circulation and to avoid causing traffic in neighborhoods, the shuttle bus route is limited to Burton Drive, Patterson Place, Highway One, Santa Rosa Creek Road, and Main Street, and the shuttles use the existing Lodge parking lot as the turnaround. The pedestrian and traffic safety plan also identifies several safety measures including and but not limited to, no parking zones, shuttle routes to avoid neighborhoods as much as possible, a nursery attendant at the Nursery crosswalk with CHP present, and signs prohibiting parking on Burton drive during market hours.

Ultimately although the parking is less than the LCP specifies, the Applicant's parking analysis demonstrates that there is adequate parking to serve the event. In addition, the Market has operated under these parking and traffic provisions since 2013 without creating coastal resource impacts due to a lack of parking. Therefore, although not fully consistent with the parking provisions of the LCP, the Commission finds that under the facts presented here, this inconsistency does not rise to the level of a substantial issue.

Conclusion

The County-approved CDP for the Market event is adequately structured and conditioned to address LCP neighborhood compatibility requirements, as well as to be consistent with LCP policies that limit or mitigate the potential adverse effects of the event, including by conditioning the event to a maximum of 3,000 attendees per night, a 9 p.m. close time (including turning off all music and light displays), implementation of off-site parking and circulation plans, lighting plans, and requiring encroachment permits. And even though the parking space numbers are less than prescribed by the LCP, given the conclusions in the Applicant's parking study and the lack of adverse impacts from the Market in prior years, this issue does not rise to a level of a substantial issue.⁸

⁸ Note that the Commission at the substantial issue phase of an appeal is not tasked with making Coastal Act or LCP consistency findings. On the contrary, the Commission is tasked with evaluating the County'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. And in fact, the Commission has on

3. Water Availability

The Coastal Plan lays out the main objectives of the LCP including water availability issues. Public Services, Public Works Policy 1 states that the County can only approve projects if there are adequate water services to serve such projects. CZLUO Section 23.04.430 carries out this policy, requiring the County to find that adequate water and sewage disposal capacity exists prior to approving any new development in San Luis Obispo County. Coastal Watershed Policies 1 and 2 protect the integrity of groundwater basins, including by requiring that new development does not exceed the basin's safe yield. These provisions state:

Public Works Policy 1: Availability of Service Capacity. New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable. (emphasis added)

CZLUO 23.04.430: Availability of Water Supply and Sewage Disposal Services. A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section.

The Coastal Plan, CZLUO, and North Coast Area Plan also include provisions and policies which specifically protect coastal watersheds including by limiting development to an amount that does not adversely impact significant resources such as creeks, wetlands, and groundwater basins. These provisions and policies include:

Policies for Coastal Watersheds Policy 1: Preservation of Groundwater Basin. The long-term integrity of groundwater basins within the coastal zone shall be protected. The safe yield of the groundwater basin, including return and retained water, shall not be exceeded except as part of a conjunctive use or resource management program which assures that the biological productivity of aquatic habitats are not significantly adversely impacted. (emphasis added)

Policies for Coastal Watersheds Policy 2: Water Extractions. Extractions, impoundments and other water resource developments shall obtain all necessary county and/or state permits. All pertinent information on these uses (including water conservation opportunities and impacts on in-stream beneficial uses) will be incorporated into the data base for the Resource Management System and shall be supplemented by all available private and public water resources studies

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.

*available. **Groundwater levels and surface flows shall be maintained to ensure that the quality of coastal waters, wetlands and streams is sufficient to provide for optimum populations of marine organisms, and for the protection of human health.** (emphasis added)*

IP Section 23.07.174: Streams and Riparian Vegetation. *Coastal streams and adjacent riparian areas are environmentally sensitive habitats. The provisions of this section are intended to preserve and protect the natural hydrological system and ecological functions of coastal streams.*

NCAP Combining Designations Policy 5: North Coast Creeks. *Portions of Santa Rosa, San Simeon, Pico, and Little Pico, Arroyo de la Cruz, Arroyo del Padre Juan, and San Carpoforo Creeks are anadromous fish streams which should be protected from impediments to steelhead migration and spawning. Adjacent riparian and wetland areas provide important wildlife habitat. Ground water and surface waters are linked, and maintenance of the creek habitats is essential to protect many coastal resources. These creeks support a number of declining species, such as the Tidewater Goby, Striped Garter Snake, Western Pond Turtle, Red-legged Frog, and Steelhead Trout.*

The Appellants contend that the approval of the event is inconsistent with LCP Public Works Policy 1 which requires an adequate and sustainable water supply to serve new development. Additionally, the Appellants contend that the County-approved CDP is inconsistent with the NCAP Coastal Watershed Policies which require protection of San Simeon and Santa Rosa creeks and their watersheds which support anadromous fish among other rare and threatened plant and animal species. Specifically, the Appellants contend that the Market guests will need toilets, drinking water, bar service, lodge service, and as a result will increase water demand in Cambria, including by possibly staying in Cambria overnight and using water at other establishments in Cambria such as other restaurants or overnight accommodations.

While it is true that Cambria lacks an adequate and sustainable water supply to support new development,⁹ and that even current levels of development in Cambria are leading to adverse impacts to San Simeon and Santa Rosa creeks --this event will not lead to a significant increase in water use. The Applicant estimates that daily water use for the event, sourced from local water supplies, is 10 – 20 gallons. The only water use associated with the Market is from food preparation in the hotel kitchen and two hand wash sinks that will be connected to the hotel water supply. The lodge will have no dishes associated with the Market as only disposable plates and cutlery will be used. All other water required for the Market (such as to service portable restrooms, handwash stations, and vendor booths) will be trucked in with that equipment.

As to the contentions that Market guests will stay in Cambria and use water during their stay, that is a not an issue with the Market using water. On the contrary, overnight

⁹ As verified and found repeatedly by the Commission in LCP amendment, CDP, and appeal cases in Cambria (including most recently for CDP applications A-3-SLO-21-0066 (Hadian SFD) and A-3-SLO-21-0065 (Bookout SFD), both denied earlier in 2022.

guests in Cambria use water, whether they attend the Market or not, and it is not the Applicant's responsibility to account for such water use.

For the above reasons, the County's approval of a CDP for the project does not raise a substantial issue of LCP conformance with respect to public service availability and coastal watershed protection.

4. Hearing Requirements

The County's LCP includes the following procedures for CDP hearings:

CZLUO Section 23.02.034(c) Development Plan:¹⁰

(1) Conditions of approval. After the conclusion of a public hearing, the Review Authority may approve, conditionally approve, or disapprove the Development Plan. In conditionally approving a Development Plan, the Review Authority shall designate such conditions to satisfy any requirements of CEQA, and to ... (2) Additional conditions. In addition to the conditions of subsection 23.02.034c(1), the Review Authority may adopt other conditions, including but not limited to:

(i) Requiring that security be provided to guarantee performance and/or compliance with conditions of approval, as set forth in Section 23.02.060 (Guarantees of Performance);

(ii) Requiring installation of specific on-site or off-site improvements;

(iii) Modifying, superseding or replacing conditions of approval imposed on the subject site or land use by a previous Development Plan, Minor Use Permit or any land use permit issued pursuant to the zoning ordinance (Ordinance No. 603).

(iv) Authorizing land uses on the site in addition to those requested in the Development Plan application where such additional uses would normally be required by this title to have Plot Plan or Minor Use Permit approval.

(v) Any other conditions judged by the Planning Commission to be necessary to achieve compatibility between the proposed use and its site, its immediate surroundings, and the community.

The Appellants contend that the County did not follow the LCP's noticing and hearing procedures, claiming that the Board of Supervisors' decision was not properly noticed since the agenda and notice of the meeting did not contain any reference to the possibility of extending the permit through the end of 2023. However, CZLUO Section 23.02.034 provides the review authority (in this case the Board of Supervisors) the discretion to add conditions to permits during their review (see **Exhibit 9** for more information). In fact, this is not out of the ordinary, and is very common practice for the Board of Supervisors to add new conditions to a project during a meeting. In addition, the Appellants participated in the hearing where the Board ultimately made its decision,

¹⁰ A "Development Plan" under the LCP is the same as a CDP.

and it does not appear that any alleged noticing deficiencies limited their ability to participate in that way. Accordingly, even though the Board extended the authorization for two years instead of one, the manner in which the county noticed the public did not appear to curtail public participation, including by these Appellants, and the Board properly exercised its discretion, including as allowed by CZLUO Section 23.02.034. For these reasons, the County's approval of a CDP for the project does not raise a substantial LCP or Coastal Act conformance issue with respect to local hearing requirements.

5. Conclusion

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity or public access, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise such a substantial issue (and, as indicated previously, is not tasked with making Coastal Act or LCP consistency findings)¹¹. The Commission's regulations lay out the following five factors that it may consider when determining whether the issues raised in a given appeal are "substantial" (14 CCR section 13115(c): the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied 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 the County's approval of a CDP for this project does not raise a substantial issue of LCP conformance.

Here the first factor, the degree of factual and legal support for the local government's decision, weighs heavily against a determination of finding substantial issue. The County found the event consistent with applicable LCP policies with adequate factual and legal support. In terms of the allowed uses, the County reasonably found that the Market, which is considered a temporary event, is allowed at the Cambria Pines Lodge even though it is within 1,000 feet of residential zoning. The LCP's Area Plan contains a specific policy, NCAP Planning Area Standard Policy 5 specific to Cambria Pines Lodge, that allows for temporary events at Cambria Pines Lodge, and the permit is adequately conditioned to respect the surrounding residential neighborhoods and their character. Similarly, the County reasonably found that even though the Cambria Nursery is designated "Residential Suburban", its use for parking and Market sales are allowed under the LCP since NCAP Planning Area Standard Policy 2 allows for commercial use at the site, Table O provides for a variety of retail sales, and because such use is a continuation of the nursery's year-round visitor serving and retail use. Regarding the Appellants' neighborhood compatibility contentions, the CDP is conditioned to adequately address light, noise and traffic generated by the Market. And while the parking provided for the event is not consistent with an applicable LCP policy,

¹¹ See footnote 8

given use limitations and the conclusions in the Applicant's parking study, this LCP inconsistency is not significant. Turning to water supply, almost all water associated with the Market is imported, and the four-week market should not significantly impact water use in Cambria. Thus, there is adequate factual and legal support for the County's decision.

Regarding the second factor, the extent and scope of the development, the Christmas Market is a limited event that only occurs for four weeks out of the year from 5 p.m. to 9 p.m., and the event does not significantly or adversely impact coastal resources. This factor also weighs towards a finding of no substantial issue.

Regarding the third factor, the significance of the affected resources, the proposed project is located in an area where development has the potential to adversely affect significant coastal resources such as rare Monterey pine forest and important coastal watersheds. However, as discussed above, the event is structured, and the County's CDP is conditioned, to be consistent with LCP policies protecting such resources. Thus, the third factor also suggests a finding of no substantial issue.

Regarding the fourth factor, the precedential value of the local government's decision for future interpretations of its LCP, there is nothing particularly LCP-critical in the County's decision, and the precedential value for future LCP interpretation is low as this is a unique, once a year event. Therefore, the fourth factor also weighs in favor of no substantial issue.

Finally, regarding the fifth factor, whether the appeal raises only local issues as opposed to those of regional or statewide significance, the project does not raise issues of regional and statewide significance since the project is limited in its extent and scope to a once a year event that has no significant coastal resource impacts. Instead, the contentions raised surrounding the event primarily have to do with neighborhood concerns. Thus, the fifth factor supports a finding of no substantial issue as well.

In sum, the County's approval of a CDP for the proposed project does not raise a substantial LCP conformance issue. The proposed project is a temporary winter holiday event and is not expected to lead to significant adverse impacts to coastal resources. For the reasons stated above, the Commission finds that Appeal Number A-3-SLO-22-0024 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.

6. APPENDICES

A. Staff Contacts with Agencies and Groups

- San Luis Obispo County Planning and Building Department