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Appeal Filed:	6/22/2022
Action Deadline:	8/31/2022
Staff:	OR - SF
Staff Report:	7/29/2022
Hearing Date:	8/12/2022

STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number: A-2-PAC-22-0029

Applicant: City of Pacifica Public Works Department

Appellant: Jeff Guillet

Local Government: City of Pacifica

Local Decision: City of Pacifica Coastal Development Permit Application Number CDP-439-22, approved by the City Planning Commission on May 16, 2022

Project Location: Along Bradford Way between Sharp Park Golf Course and Highway 1 (just east of 2600 Francisco Boulevard) in the City of Pacifica, San Mateo County

Project Description: Establish two on-street oversized vehicle-only parking spaces, including minor right-of-way improvements (such as signs, poles, and pavement markings) along Bradford Way for a period of three years

Staff Recommendation: Substantial Issue

IMPORTANT HEARING PROCEDURAL NOTE

Please note that the Commission will not take public testimony on this “substantial issue” recommendation unless at least three Commissioners request it. Commissioners may ask questions of the Applicant, aggrieved persons (i.e., generally persons who participated in some way in the local permitting process), the Attorney General, and the Executive Director prior to determining whether to take such testimony regarding whether the appeal raises a substantial issue (14 CCR § 13115(c)). If the Commission receives public testimony on the substantial issue question, testimony is generally and at the discretion of the Chair limited to three minutes total per side. Only the Applicant,

persons who opposed the application before the local government, the local government, and their proxies/representatives are qualified to testify during the substantial issue phase of the appeal hearing. Other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony from all interested parties. 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 Pacifica approved a coastal development permit (CDP) authorizing two 30-foot by 10-foot dedicated oversized vehicle parking spaces along Bradford Way, east of 2600 Francisco Boulevard, in the City of Pacifica in San Mateo County. The City-approved parking spaces are part of a City-approved “Temporary Safe Parking Program” (TSPP)¹ that would be operated in tandem with the Pacifica Resource Center, a local non-profit, and it would entail providing oversized vehicle (i.e., vehicles longer than 22 feet) parking permits for such parking spaces to help serve the local unhoused and/or housing insecure community. The City agreed to designate 13 such TSPP oversized vehicle-only parking spaces in the City, including five in the coastal zone, as part of a settlement of a lawsuit filed by the American Civil Liberties Union, the Legal Aid Society of San Mateo County, and disability rights advocates that challenged the City’s Oversized Vehicle Parking Ordinance (OVO) as unconstitutional. The City’s CDP at issue in this appeal authorizes the designation and development of two of the four oversized vehicle-only parking spaces and not the TSPP and/or the City’s OVO (staff has recommended previously to the City that before implementing the OVO in the coastal zone it must either amend its certified LCP or authorize the ordinance through a CDP). The Appellant contends that the City’s approval of the two oversized vehicle-only parking spots is inconsistent with public access policies of the Coastal Act and certified LCP because they would create a public safety hazard by impeding bicycle and pedestrian access along the California Coastal Trail, in addition to other coastal resource impact contentions.

The LCP and Coastal Act require that maximum public access opportunities be provided, including adequate parking facilities, and that lower cost visitor-serving and recreational facilities be protected, encouraged, and, where feasible, provided. Here, the City-approved project would allocate 80 feet of existing public parking space area

¹ The temporary, three-year TSPP was a required term of a settlement agreement between the City of Pacifica and the American Civil Liberties Union, the Legal Aid Society of San Mateo County, and disability rights advocates, resulting from a lawsuit filed against the City related to their Oversized Vehicle Parking Ordinance (OVO), which prohibits oversized vehicles from parking in certain street right-of-way locations (such as on streets less than 40 feet wide, near intersections, or encroaching on a bike lane) 24 hours a day and 365 days per year. The City had implemented their OVO in the coastal zone prior to the lawsuit being filed and has continued to enforce it in the coastal zone regardless of litigation. The OVO has not been recognized through either an LCP amendment or a CDP, and the Commission is tracking its prior implementation as a Coastal Act and LCP violation. Staff notes that it informed the City before it adopted its OVO that implementation in the coastal zone without the requisite LCP/CDP authorization would constitute a knowing and intentional Coastal Act/LCP violation.

along Bradford Way exclusively for two oversized vehicles (i.e., two tandem 30-foot long parking spaces with a 10-foot long no parking buffer zone at either end). The parking space area in question is near Highway 1 in an on-street parking area that is not in heavy demand for public parking for coastal access, and thus allocating them specifically for oversized vehicle use should not significantly affect public access opportunities at this location. In addition, users of the designated parking spaces would be required to agree not to impede pedestrian walkways and bike routes (which in this case are not designated and therefore pedestrians and bicyclists share lanes with cars). Other coastal resource impact contentions regarding habitat and species are not significant issues due to the City-approved program occurring in already developed areas, well away from such resources, as well as the good neighbor requirements that would assure such impacts are avoided, which are built into the program.

Nevertheless, the City's designation of two OVO parking spaces (and four total in the coastal zone under the City's TSPP), is integrally related to the City's uncertified program for regulating oversized vehicles, reflected in both the OVO and the related requirements of the City's TSPP, which outlines requirements for those who wish to use the designated OVO parking spaces. It appears that the entire purpose of the City's approval of OVO parking spaces is to resolve pending litigation challenging its ordinance. In addition, there are related and important questions as to potential impacts on public access to the coast by unsheltered individuals that use oversized vehicles as a place to sleep at night and/or as a place to park by day. The Commission's Environmental Justice Policy directs the Commission to consider coastal resource issues and impacts through an environmental justice lens when evaluating appeals of locally-approved CDPs. While the approved OVO parking spaces could potentially provide dedicated oversized vehicle parking spaces for unsheltered individuals, there are significant requirements for joining the TSPP which may impede some from being able to participate. In addition, Commission staff has informed the City previously that enforcement of the OVO in its current form in the coastal zone raises significant public access concerns because the ordinance prohibits oversized vehicles from parking in areas that could be used for coastal access. Thus, the City's uncertified OVO, which prohibits oversized vehicle parking in the coastal zone, cannot currently be implemented in the coastal zone without a CDP or LCP amendment, and therefore is being tracked as a violation by the Commission's enforcement division. Absent the City going forward with a CDP or LCPA for the OVO, oversized vehicle users who would have used these TSPP parking spaces will be able to park anywhere in the coastal zone, assuring impacts to potential TSPP participants of the Commission taking jurisdiction over the City-approved project will be negligible.

As such, the project raises broader and more significant questions concerning the City's regulation of oversized vehicles in the City's coastal zone, and the potential public access impacts of the program as it relates to the approved oversized vehicle parking spaces, that warrant a further evaluation by the Commission in a de novo appeal hearing. Therefore, after consideration of the five substantial issue factors in the Commission's regulations (14 CCR § 13115(c)), staff recommends that the Commission find substantial issue and accept the appeal for a full de novo review.

The single motion and resolution to find substantial issue is found on **Page 6** below.

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Site Photos

Exhibit 3 – City-Approved Project Plans

Exhibit 4 – City of Pacifica Final Local CDP Action Notice

Exhibit 5 – Appeal of City CDP Action

Exhibit 6 – Prior Commission Staff Comments on the City’s Oversized Vehicle Ordinance

Exhibit 7 – Participant Bill of Rights and Code of Conduct

1. MOTION AND RESOLUTION

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

Motion: *I move that the Commission determine that Appeal Number A-2-PAC-22-0029 raises **no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a **no** vote.*

Resolution to Find Substantial Issue: *The Commission hereby finds that Appeal Number A-2-PAC-22-0029 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified City of Pacifica Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

2. FINDINGS AND DECLARATIONS

A. Project Background

The City-approved project is being implemented as a required term of a settlement agreement resulting from a class action lawsuit filed by the American Civil Liberties Union (ACLU), the Legal Aid Society of San Mateo County, and disability rights advocates against the City of Pacifica in 2021 (see *Geary, et al. v. City of Pacifica*, Case No. 3:21-cv-01780). This lawsuit alleged that the City's Oversized Vehicle Ordinance (OVO) (passed by the City Council on January 27, 2020 and thereafter implemented citywide) was unconstitutional on the grounds that the OVO violated the right to free movement, charged excessive fines and fees, unlawfully seized property (by towing), violated substantive due process, and violated disability laws. The OVO bars oversized vehicles (i.e., defined in the OVO as vehicles longer than 22 feet) from parking on certain street right-of-way areas (namely on all streets less than 40 feet wide, near an intersection, or areas that encroach on a bike lane) 24 hours a day and 365 days per year. The City had apparently implemented their OVO in the coastal zone prior to the lawsuit being filed and has continued to enforce the OVO regardless of the status of the lawsuit. The settlement agreement includes a requirement that the City develop and implement a "Temporary Safe Parking Program" (TSPP) that would be operated in tandem with the Pacifica Resource Center (PRC), a local non-profit organization, for three years. Per the settlement, the TSPP would include at least 13 oversized vehicle-only parking spaces in the City that could be used exclusively 24 hours a day by oversized vehicles permitted by the City/PRC. Additionally, the settlement agreement required the City to work with the PRC to provide a bimonthly mobile dumping station

and trash collection for permitted users of the designated parking spaces. As currently constituted, the City/PRC indicate that they intend the TSPP to be adaptive, whereby they will work to amend the TSPP over its three-year term as issues arise.

As part of the TSPP, the PRC would screen potential oversized vehicle parking permittees to ensure that: (1) they are experiencing homelessness or are housing insecure, as well as working with the PRC toward permanent housing; (2) they own, lease, or use their oversized vehicle with permission of the vehicle owner; (3) they have a valid driver's license, valid insurance, and current State vehicle registration; and (4) the designated vehicle has working basic safety and sanitation features (including fire extinguishers, smoke detectors, carbon monoxide alarms, toilets, and waste valves). The PRC would issue parking permits for oversized vehicle users/vehicles meeting such parameters at its discretion, with a single term for a permit lasting up to 29 days, which may be renewed over the course of the three-year program. The City/PRC indicates that user fees for parking permits would be on a sliding scale dependent on income, as follows: \$29 for families with income at 30% or below median income, \$290 for families with income between 30% and 50% of median income, and \$720 for families with income between 50% and 80% of median income. In addition, parking permit holders must sign and agree to be bound by a the Participant Bill of Rights and an Onsite Code of Conduct (see **Exhibit 7**), which together require them to adhere to certain operational standards and good neighbor considerations, including requiring proper disposal of wastewater, trash, and recyclables; proper storage of all personal property and pets within their vehicle; no cooking outside of the designated vehicle; no fires, storage of hazardous materials, illegal drug use or sales, public alcohol consumption, loitering, or trespass in or around their vehicle; and no obstruction of pedestrian and bicycle access. The prerequisites to even apply to park in these oversized vehicle-only parking spaces are quite rigorous, and therefore could create potential hurdles to participation in the TSPP. Although the subject CDP on appeal to the Commission does not authorize the TSPP in full and is more narrowly focused on approving two designated oversized vehicle parking spaces in the coastal zone, the City's permit conditions require compliance with all TSPP requirements for participants using the two designated parking spaces and, in that sense, authorizes the TSPP as to the designated OVO parking spaces.

The City has continued to enforce the OVO in the coastal zone despite the lawsuit, including towing oversized vehicles that park in the prohibited street areas described above, that park on City streets for longer than 72 hours, or that have more than five unpaid parking citations. To be clear, however, the OVO has not been recognized through either an LCP amendment nor a CDP. In fact, the Commission notes that the City was informed before it adopted its OVO that implementation in the coastal zone without the requisite LCP/CDP authorization would constitute a knowing and intentional Coastal Act/LCP violation.² Therefore, as the TSPP is intrinsically linked to the OVO, both programs need to be holistically evaluated in order to determine the full impacts on public access and environmental justice. Thus, notwithstanding the City's approval of a CDP to designate these oversized vehicle only parking spaces, the City may not

² See Commission staff comments to the City in **Exhibit 6**.

implement either the City's TSP or its OVO in the coastal zone. In addition, the City's failure to obtain CDP/LCP authorization of its OVO prior to its implementation back in 2020 is a Coastal Act/LCP violation, and the matter is being tracked by the Commission's enforcement division, including to consider options for future action to address the violation.

B. Project Description and Location

The City-approved project is located on Bradford Way, in the public right-of-way located east of 2600 Francisco Boulevard, between the Sharp Park Golf Course and Highway 1 in the City of Pacifica (see **Exhibit 1**). The project would allocate 80 feet of existing public parking space area along Bradford Way exclusively for two oversized vehicles (i.e., two tandem 30-foot long by 10-foot wide parking spaces with a 10-foot long no parking buffer zone at either end), where such parking spaces would be allotted for exclusive use by oversized vehicles 24 hours a day for a temporary period of three years, subject to the obtaining a parking permit from the City/PRC for their use. The project includes installation of two poles with 12 by 18-inch signs identifying the spaces (see **Exhibit 3**), placement of a 4-inch-wide white thermoplastic marking to delineate the three non-curb sides of the parking spaces, and associated red curbing for the 10-foot no parking buffers.

C. City of Pacifica CDP Approval

The City of Pacifica Planning Commission approved a CDP (City CDP No. CDP-439-22) for the above-referenced project on May 16, 2022.³ The City's notice of its CDP decision was received on Friday, June 10, 2022 (see **Exhibit 4**), and the Coastal Commission's ten-working day appeal period for this action began on Monday, June 13, 2022, and concluded at 5 pm on June 24, 2022. One valid appeal was received during the appeal period (see **Exhibit 5** for full appeal document).

D. Appeal Procedures

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

³ The City also approved another similar project in the coastal zone on the same day, where that project allowed for two similar such oversized vehicles parking-only spaces to be identified north of 560 San Pedro Avenue and between San Pedro Avenue and Highway 1. That City CDP decision (City CDP-438-22) has also been appealed to the Commission, and it is also scheduled for Commission action at the Commission's August 2022 meeting.

This City CDP decision is appealable because it is between the sea and the first public road paralleling the sea.

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., 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 and address 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 for Commission action. In this case, the Applicant has not waived the 49 working day requirement, and thus the deadline is August 31, 2022.

The Coastal Act and the Commission's implementing regulations are structured such that a substantial issue is presumed when the Commission acts on this question unless the Commission finds that an appeal does *not* raise a substantial issue, and the Commission considers several factors in making that determination.⁴ At the substantial issue stage of the hearing, the Commission may only consider contentions raised by the appeal. At the substantial issue stage, 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 on the substantial issue question unless at least three Commissioners request it. Otherwise, a substantial issue is found and the Commission will proceed to the *de novo* stage of the hearing. If 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, Appellant(s), 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.

⁴ The term substantial issue is not defined in the Coastal Act. The Commission's regulations indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant issue" as to conformity with the certified local coastal program (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 substantial 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.

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

E. Summary of Appeal Contentions

The Appellant's contentions focus on two main areas, public access and sensitive habitat, contending that the two oversized vehicle parking-only spaces at this location would create a public safety hazard by impeding bicycle and pedestrian access along the California Coastal Trail and endanger sensitive coastal areas inhabited by federally protected species. Specifically, the Appellant states that this location is an established bike route and the only corridor that connects walkers, hikers, runners, and cyclists all to the California Coastal Trail and that the roadway will not be wide enough for cyclists to safely pass the oversized vehicles. Further, the Appellant states that since there is no infrastructure or services to support handling of garbage and wastewater, and as oversized vehicles use gas or diesel-powered generators that could cause spills and/or fires, such vehicles could affect the wetland habitat in the Sharp Park Golf Course and thus impact California red-legged frogs and San Francisco garter snakes. The Appellant's full contentions can be found in **Exhibit 5**.

F. Standard of Review

The standard of review for considering these appeal contentions is the certified City of Pacifica LCP (which is made up of a certified Land Use Plan (LUP) and a certified Implementation Plan (IP)) and the public access policies of the Coastal Act (which include Coastal Act Sections 30210 through 30224)).

G. Substantial Issue Determination

1. Public Access

Applicable LCP Provisions

The LCP contains a number of provisions related to public access, and they generally mirror Coastal Act requirements. Applicable LCP provisions include:

LUP Policy 1: *Maximum access 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 property-owners, and natural resource areas from overuse.*

LUP Policy 2: *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rock coastal beaches to the first line of terrestrial vegetation.*

LUP Policy 3: *Public Access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (a) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (b) Adequate access exists nearby; or (c) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

LUP Policy 4: *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.*

LUP Policy 5: *Lower cost visitor and recreational facilities and housing opportunities for persons of low and moderate income shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. New housing in the Coastal Zone shall be developed in conformity with the standards, policies, and goals of the local conformity with the standards, policies, and the goals of the local housing elements adopted in accordance with the requirements of subdivision (c) of Section 650302 of the Government Code.*

LUP Policy 25: *The location and amount of new development should maintain and enhance public access to the coast by: (a) facilitating the provision or extension of transit service; (b) providing commercial facilities within or adjoining residential development, or in other areas that will minimize the use of coastal access roads; (c) providing non-automobile circulation within the development; (d) providing adequate parking facilities or providing substitute means or serving the development with public transportation, (e) assuring the potential for public transit for high intensity uses such as high-rise office buildings; and (f) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of on-site recreational facilities to service the new development.*

LUP Policy 26: *New development shall: (a) minimize risks to life and property in areas of high geologic, food, and fire hazard; (b) assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic*

instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs; (c) be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development; (d) minimize energy consumption and vehicle miles traveled; (e) where appropriate, protect special communities and neighborhoods which, because of their unique characteristics are popular visitor destination points for recreational uses.

Applicable Coastal Act Provisions

All of these above-cited LCP provisions derive from the authority of the Coastal Act, which itself provides:

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

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

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

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

Analysis

Taken together, the LCP and Coastal Act require that maximum public access opportunities be provided, including adequate parking facilities, and that lower cost visitor-serving and recreational facilities be protected, encouraged, and, where feasible, provided.

Here, the City-approved project would temporarily designate existing public parking space area on a paved street for exclusive use by two oversized vehicles participating in the City's Temporary Safe Parking Program (TSPP). The parking spaces in question are near Highway 1 in an area that is not in heavy demand for public parking for coastal access, and thus allocating them specifically for oversized vehicle use is not likely to significantly affect overall public access opportunities at this location.

In terms of other potential access impacts, Bradford Way does not include designated pedestrian or bicycle areas, and rather pedestrians and bicyclists currently 'share the

road' with vehicles. Although not ideal, the project will not change that status quo, including because users of the designated spaces would be required to keep all personal property within their vehicles and would be barred from blocking any pedestrian or bicycle access. Thus, the City-approved project should not significantly alter or affect existing access at this location, including California Coastal Trail (CCT) access.⁵

However, while the project, when viewed in isolation, may have minor impacts on public access to the coast (and could possibly provide some improved access for two oversized vehicles), the project is integrally related to the City's uncertified OVO and the related uncertified TSSP, which creates requirements for all individuals who wish to use the designated OVO parking spaces. The City's permit requires that all users of designated OVO parking spaces comply with the requirements of the TSSP, which as previously mentioned are rigorous. Specifically, the program qualifications are restrictive in some respects, and therefore could potentially be a hurdle for participation in the TSSP and access to the designated oversized vehicle parking spaces, especially for those oversized vehicle users of limited means where meeting all of the specified criteria may actually entail fairly significant costs. Therefore, with what little has been reviewed and analyzed of the OVO or related TSSP to date, it is difficult to assess the broader implications of the City's approval of this project for public access to the coast. Indeed, the overall access impacts of the OVO on the unsheltered community as a whole in Pacifica remains entirely unclear, though it is likely implementation of the OVO restricts coastal access for the unsheltered community and others who use oversized vehicles. Further, it appears that the City has continued enforcement of the OVO in the coastal zone despite lacking a CDP or LCP authorization for the significant restrictions on oversized vehicles in the ordinance. Additionally, the requirements to join the program could be restrictive, and it is unclear whether the 13 total parking spots provide adequate parking to balance the restrictions of the OVO for the unsheltered individuals in Pacifica. Therefore, there is potential for a substantial environmental justice issue which is further discussed below. Thus, the City needs to issue a CDP for the OVO as a whole before the TSSP spots are authorized in order to more thoroughly analyze these issues, all of which creates a substantial issue of LCP conformance regarding public access.

2. Environmental Justice

The project's potential impacts on public access to the coast raise related environmental justice concerns that the Commission may consider in evaluating whether to accept the appeal.

Applicable Coastal Act Provisions

The Coastal Act explicitly identifies the need to ensure equality and environmental justice and allows the Commission to consider coastal resource issues and impacts

⁵ In that regard Bradford Way provides a sort of secondary and inland CCT access inasmuch as the main CCT access is located on the western side of the Sharp Park Golf Course on the Sharp Park Berm.

through that lens in appeal cases, like this, even if the LCP does not explicitly address environmental justice, as is the case here. 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:*

- (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

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, as well as a means of transportation more broadly requiring a parking space, 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.⁶ 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 and consistent with prior Commission actions, the Commission finds that unsheltered individuals⁷ that use an oversized vehicle as a place to sleep at night and/or as a means of transportation more broadly requiring a parking space are in fact an environmental justice community. The Coastal Act’s definition of environmental justice 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 and/or as transportation more broadly can generally be classified as a lower income segment of

⁶ 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.

⁷ 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 and/or who use oversized vehicles as transportation and need a place to park during the day.

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).⁸ In the City of Pacifica, 161 people were identified as unsheltered as part of the 2022 one-day homeless count conducted every year in order to meet federal requirements and gather information to help illustrate the scope of the issue.⁹

Finally, Commission staff has 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 and/or use them as transportation and need to park by day definitely qualify as an environmental justice community. Thus, the Commission here finds that such unsheltered individuals qualify as an environmental justice community to which the Coastal Act’s environmental justice provisions and the Commission’s EJ Policy apply.

To date, a key area of controversy associated with the City-approved project has been the impacts that implementation of the City’s OVO and its parking restrictions will have on unsheltered individuals who use oversized vehicles as a place to sleep overnight and/or to park during the day.¹⁰ The City’s action on the two oversized vehicle parking spots here (or four total considering the similar, second appeal on the Commission’s August agenda as well), would provide for oversized vehicle-only parking in designated areas, which would be subject to a variety of prerequisites and requirements. In total, the City’s TSPP would provide 13 oversized vehicle-only parking spaces throughout the City, with 5¹¹ in the coastal zone, which would provide some parking to the unsheltered community using oversized vehicles. That said, the prerequisites to even apply to park in these oversized vehicle-only parking spaces are quite thorough and restrictive in some respects, and therefore could potentially be a hurdle for participation in the TSPP and access to the designated oversized vehicle parking spaces, especially for those oversized vehicle users of limited means where meeting all of the specified criteria may actually entail fairly significant costs. Based on the way in which the TSPP interacts with the OVO, and its 24 hour a day and 365 day a year oversized vehicle parking prohibitions and restrictions on oversized vehicle parking, the overall impact of the OVO on the unsheltered community is unclear, as is the way in which the TSPP parking spots

⁸ As detailed by the U.S. Department of Housing and Urban Development in its 2019 Annual Homeless Assessment Report to Congress.

⁹ Known as a “point-in-time” count.

¹⁰ While this may not be the specific concern raised by the appellants in this appeal, the broader controversy surrounding public access impacts of restricting oversized vehicles generally, how the City does so, and what restrictions are imposed on users of designated OVO parking spaces, is all integrally related to an evaluation of the public access impacts of designating OVO parking spaces.

¹¹ The 5th parking spot in the coastal zone is going through the local process as CDP-437-22 and is not in the Coastal Commission appeals jurisdiction.

will balance the restrictions that the OVO will have on the unsheltered community. As mentioned above, the City has not obtained a CDP (or LCP amendment) authorizing either the City's OVO or the related TSPP in whole.¹² Thus, the impact of the entire program on unsheltered populations in the coastal zone may be greater and requires a full analysis of the OVO program to understand the full impact of the ordinance on coastal access, including importantly for the directly affected unsheltered population. In other words, evaluating the extent to which the project interferes with public access to the coast, as the appeal contends, requires a broader understanding of the entire way in which the City is regulating and restricting oversized vehicles in the first place. Finally, the City's uncertified OVO, which prohibits oversized vehicle parking in the coastal zone, cannot currently be implemented in the coastal zone without a CDP or LCP amendment, and therefore is being tracked as a violation by the Commission's enforcement division. Absent the City going forward with a CDP or LCPA for the OVO, oversized vehicle users who would have used these TSPP parking spaces will be able to park anywhere in the coastal zone, assuring impacts to potential TSPP participants of the Commission taking jurisdiction over the City-approved project will be negligible.

In conclusion, the appeal raises a substantial issue as to the City-approved project's consistency with public access and environmental justice policies of the Coastal Act and the public access policies in the certified LCP.

3. Habitat

Applicable LCP Provisions

The LCP contains a number of provisions related to habitat protection. Applicable LCP provisions include:

LUP Policy 12: *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of wastewater discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

LUP Policy 18: *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

¹² As discussed more fully below, the City's failure to obtain CDP/LCP authorization for the OVO prior to its implementation in 2020 is a Coastal Act violation.

LUP Policy 23: *New development, except as otherwise provided in this policy, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels. Where feasible, new hazardous industrial development shall be located away from existing developed areas. Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.*

Analysis

The LCP requires protection of wetlands, ESHA, and sensitive habitat. Here, despite the Appellant's contentions, there is no evidence in the record to suggest that the parking spaces in question are anywhere near a wetland, ESHA, or areas occupied by sensitive species. As to allegations that users would improperly dispose of wastes, and such disposal would lead to impacts on such areas/species as wastes migrated, several things are noted.

First, the City-approved project requires that Pacifica Resource Center inspect oversized vehicles in the program to ensure that they include working toilet and waste disposal facilities. Second, users of the parking spaces are required to abide by requirements to properly dispose of gray water, black water, and trash and recyclables. Third, the parking spaces would be accompanied by a recreational vehicle dump station¹³ (located at 2212 Beach Boulevard)¹⁴ and a mobile dump station service that would be available to all parking permittees. Fourth, Pacifica Resource Center staff would monitor parking spaces to ensure that the areas are maintained in a clean manner, including in terms of garbage and debris. Fifth, conditions of the City CDP require participants to comply with all Bay Area Air Quality Management District regulations applicable to any generator use. And sixth, the Pacifica Resource Center can provide written warnings to participants for failing to comply with applicable rules, where their parking permit and participation can be revoked if needed. These types of avoidance and mitigation measures are designed to prevent the dumping of black or

¹³ A drive-up facility for oversized vehicles that includes a connection point to the sanitary sewer that allows oversized vehicles with wastewater and grey water collections systems to 'dump' their accumulated tanks.

¹⁴ The Commission is not aware of any such dump station currently at this location. It is in the coastal zone (at the City's facility at that address, including corporation yard facilities), and its development and use would require its own CDP.

grey water, and to control debris, and should be sufficient to avoid any significant impacts to any nearby habitat areas, including in Sharp Park.¹⁵

In conclusion, the Appellant's habitat contentions do not raise a substantial Coastal Act or LCP issue.

4. Violation

This appeal raises Coastal Act and LCP enforcement issues because the City adopted and implemented its OVO (including both the oversized vehicle parking restrictions, as well as the more physical development that accompanied them-e.g., installation of parking restriction signs) in 2020 without an LCPA and without a CDP, and has continued to enforce the OVO, despite this procedural issue. This occurred despite the City being informed by Commission staff prior to OVO implementation that a CDP/LCP authorization was required before implementing the program in the coastal zone.

Although development has taken place prior to this City CDP action that has been appealed to the Commission, consideration of this appeal by the Commission has been based solely upon the City's LCP and the Coastal Act's public access provisions, all as informed by the Coastal Act's environmental justice provisions and the Commission's EJ Policy. The City's approval of the subject CDP (CDP-439-22) and the Commission's finding of substantial issue on the appeal (Appeal No. A-2-PAC-22-0029) in no way resolves this Coastal Act/LCP violation, nor does the Commission taking action on substantial issue condone or authorize prior or future implementation of the unpermitted OVO. In addition, the Commission's action on this appeal does not constitute an implied statement of the Commission's position regarding the legality of City implementation of the unpermitted OVO without a CDP (and without an LCP amendment). This matter has been referred to the Commission's enforcement division to consider options for future action to address the violation. The Commission's enforcement division is continuing to investigate and monitor this outstanding Coastal Act/LCP violation, which will need to be addressed by the City in a future action. And to be clear, since the City is currently implementing its OVO in the coastal zone without authorization then that is again a knowing and intentional violation of Coastal Act and LCP permitting requirements, which by definition include additional penalty provisions.

Finally, Commission review and action on this appeal does not constitute a waiver of any legal action with regard to the identified violations (or any other violations not yet identified), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken without a CDP, or of any other development, except as otherwise expressed herein.

5. Conclusion

¹⁵ As the Commission is aware from past actions, the Sharp Park Golf Course area includes habitat for the California red-legged frog and the San Francisco garter snake. However, these parking spaces are located some 300 feet away from the closest nearby stream, 500 feet from Laguna Salada, and 600 feet from the pond on the southwest side of the golf course where habitat is present.

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 a substantial issue of LCP conformance. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue: the degree of factual and legal support for the City's decision; the extent and scope of the development as approved or denied by the City; the significance of the coastal resources affected by the decision; the precedential value of the City 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, the five factors, considered together, support a conclusion that the City's approval of a CDP for the proposed project raises a substantial issue of LCP and Coastal Act conformance.

First, in terms of the degree of factual and legal support for the City's decision, while there is factual and legal support for the City's decision to approve the project as consistent with the LCP's wetland and ESHA policies, significant questions exist concerning the factual and legal support for the City's determination that the project is consistent with public access policies of the Coastal Act and certified LCP. As described in the findings above, evaluating the extent to which the project interferes with public access to the coast, as the appeal contends, requires a broader understanding of the way in which the City is regulating and restricting oversized vehicles in the first place via the OVO. Here, however, it is unclear how the OVO, which has not gone through the local CDP process, would impact users of oversized vehicles, including unsheltered individuals who are considered an environmental justice community. It is also unclear whether the City's TSPP, which is also uncertified, provides appropriate restrictions on users of designated oversized vehicle parking spaces. Thus, there are factual and legal gaps in the City's analysis and decision. Therefore, the first factor weighs in favor of a finding of substantial issue.

Second, with respect to the extent and scope of the City-approved development, the development is limited to two 30-foot by 10-foot designated parking spaces with a 10-foot no parking buffer at each end, in total encompassing an 800 square-foot area on an already paved street where vehicle parking is currently occurring. However, the City approved a separate CDP for two additional oversized vehicle parking spaces elsewhere in the coastal zone with similar conditions and requirements to comply with the uncertified TSPP (a project that is also on appeal and on the Commission's August agenda). As mentioned previously, however, the CDP appealed to the Commission is integrally related to the City's OVO and the related TSPP, both of which are uncertified, and which together could have much greater impacts on public access to the coast that are important to weigh in the balance. Thus, the extent and scope of this project is not insignificant and is greater than these two parking spaces alone. The second factor also weighs in favor of finding substantial issue.

Third, with respect to the significance of affected coastal resources, the proposed project is located on a paved street which already allows for vehicle parking, and the nearest coastal access points and habitat areas are sufficiently far enough away that the City-approved project is unlikely to affect those resources. However, as described in the findings above, the appealed project raises important public access concerns that are amplified when viewed through an environmental justice lens, as the City-approved oversized vehicle parking spaces are integrally related to the City's uncertified OVO, which severely limits parking of oversized vehicles in the coastal zone. The third factor also weighs in favor of finding substantial issue.

Fourth, with respect to the potential to set an adverse precedent for future interpretations of the LCP, the proposed project has the potential to set an adverse precedent because the City-approved permit requires users of the designated oversized vehicle parking spaces to comply with the uncertified TSSP, which could be used as precedent for future projects and interpretations of the LCP by the City and other parties. Therefore, the fourth factor weighs in favor of finding substantial issue.

Finally, as to the fifth factor, the City-approved project does raise issues of regional and statewide significance. The scope of the project may be limited to two dedicated parking spots in this particular location (with a total of four parking spots in the coastal zone when considering the related local CDP). But the City's designation of only four parking spaces for oversized vehicles in the City's coastal zone, and prohibition of these vehicles in many other areas that may be used for coastal access, could establish a precedent for other local governments considering similar ordinances restricting oversized vehicles. As described above, restrictions like those contained in the City's OVO raise environmental justice concerns that are a matter of significant statewide importance and importance to the Commission, as reflected in the Commission's Environmental Justice Policy. Thus, the fifth factor also supports a finding of substantial issue.

In this case, these five factors, considered together, support a conclusion that the appeal of the City's approval of a CDP for this project does raise a substantial issue of conformance with public access policies of the Coastal Act and certified LCP. Thus, and for all the reasons stated herein, the Commission finds that Appeal Number A-2-PAC-22-0029 raises a substantial issue of conformance with the certified City of Pacifica LCP and the public access policies of the Coastal Act.

3. APPENDICES

A. Substantive File Documents¹⁶

- City of Pacifica Final Local CDP Action Notice
- Appeal of City CDP Action

¹⁶ These documents are available for review from the Commission's North Central Coast District office.

B. Staff Contacts with Agencies and Groups

- City of Pacifica Planning Department