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# F17a

Appeal Filed: 12/19/2022  
Action Deadline: 3/2/2023  
Staff: Kiana Ford - SC  
Staff Report: 1/20/2023  
Hearing Date: 2/10/2023

## STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION ONLY

**Appeal Number:** A-3-STC-22-0070

**Applicant:** Roger Bernstein

**Appellant:** Anne Segal and Robert Segal

**Local Government:** City of Santa Cruz

**Local Decision:** Coastal development permit application number CP20-0068 approved by the City of Santa Cruz City Council (on local appeal) on November 29, 2022.

**Location:** 126 Eucalyptus Avenue and 136 Pelton Avenue at the former Gateway School site adjacent to the Shrine of St. Joseph church in the City of Santa Cruz (APNs 004-571-02 and 004-571-04).

**Project Description:** Lot merger and adjustment of five existing lots into two, demolition of two existing vacant school buildings, and construction of a 76-unit senior housing development (of which two would be affordable).

**Staff Recommendation:** No Substantial Issue

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## IMPORTANT HEARING PROCEDURAL NOTE

Please note that this is a substantial issue only hearing, and testimony will be taken *only* on the question of whether the appeal raises a substantial issue. Such testimony is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits), so please plan your testimony accordingly. Only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify during this substantial issue phase of the hearing. Other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does *not* raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

## SUMMARY OF STAFF RECOMMENDATION

The City of Santa Cruz approved a CDP to combine five parcels into two and adjust their boundaries, demolish two vacant school buildings, and construct a 76-unit senior housing development on the site of the Shrine of St. Joseph church on the westside of the City of Santa Cruz. The project would replace the former Gateway School, which operated until 2019 on land owned by the church, and is located adjacent to Lighthouse Field State Beach to the south. As approved by the City, the project would include a mix of senior housing types, including studio, one bedroom, and two bedroom units. Specifically, the City-approved project includes 59 assisted living units with a total of 76 beds, 15 memory care units with a total of 19 beds, and two affordable units with a total of two beds.

The Appellant broadly alleges that the City-approved project will result in adverse coastal resource impacts, particularly to monarch butterfly habitat at the adjacent Lighthouse Field State Beach, as well as to public coastal access due to traffic impacts. The Appellant also raises water quality and coastal hazards concerns. After reviewing the local record, staff recommends the Commission find the City's approval does not raise substantial LCP conformance issues and decline to take jurisdiction over the CDP application for the project.

As a threshold measure, it's important to note that very little of the project is located within the Commission's appeal jurisdiction and thus eligible for appellate review in this substantial issue determination. The Commission's appeal jurisdiction at this site extends 300 feet inland from the inland extent of the coastal bluff, which in this case includes a very small portion of the project site. In fact, the only physical development within the Commission's appeal jurisdiction is the relocation of a meditation garden, construction of approximately eight parking spaces, and some landscaping and pathways to connect the new parking spaces with the residential facility. Thus, the vast majority of the site and the project, including all of the project's residences, is not within

the Commission's appellate jurisdiction.<sup>1</sup> This minor development scope subject to appellate review in and of itself suggests a finding of no substantial issue.

However, even when looking at the broader project, staff continues to believe that the project does not raise any LCP conformance issue of substantial note. The City undertook an extensive analysis of potential project impacts to ensure such impacts were either avoided or mitigated. For example, the City required a biological assessment to ensure appropriate siting and design so as not to impact the monarch butterfly grove at nearby Lighthouse Field State Beach. All development is well buffered over 150 feet away from the butterfly grove to avoid any direct impacts, and the City incorporated as conditions of approval all of the recommendations from the biological assessment to avoid indirect impacts, including by prohibiting certain types of pesticides, lighting restrictions, and requiring planting with native vegetation conducive to monarch habitat for area landscaping.<sup>2</sup> As such, the City appropriately followed its LCP and provided factual support to justify its approval. In addition, the City required traffic and water quality studies, finding that the project would have significantly less of an impact on traffic and circulation patterns as compared with the former school (including because many residents at the senior facility would not have private vehicles), and the number of on-site parking spaces is sufficient to accommodate staff and visitors so as not to impact public parking supply in the surrounding area. With respect to water quality, the project is conditioned to include appropriate best management practices during construction as well as post-construction stormwater management measures. And finally, with respect to coastal hazards, the project site is located inland from the coastal bluff and outside of the 100- and 500-year FEMA flood zones.

In sum, the project is a much-needed housing facility within a generally well-developed part of town that includes some on-site affordable senior housing units. The City appropriately identified, studied, and avoided impacts to any sensitive coastal resources, and the project can be found consistent with the LCP. This fact, in conjunction with the fact that so little of the project is part of this appellate substantial issue review, all lends itself to a no substantial issue recommendation and a decline to take up the appeal in a de novo review. The motion and resolution to effectuate this recommendation is found on the page 5 of this report.

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<sup>1</sup> Per Coastal Act Section 30603, the only part of the project eligible for review in this Substantial Issue determination is the portion of the project within the Commission's appeal jurisdiction. If the Commission were to find Substantial Issue, then the entirety of the project would be subject to a de novo CDP review.

<sup>2</sup> The project is also consistent with previous Commission findings in other similar projects. The Appellants cite to CDP Appeal A-3-STC-01-045, whereby the Commission approved a new parking lot on the St. Joseph church site along Pelton Avenue and immediately adjacent to the new parking lot approved by the City in this project. In that previous appeal, and after extensive review of monarch butterfly behavior and habitat needs at Lighthouse Field, the Commission found that construction of the parking lot would not significantly adversely impact monarch butterfly habitat and thus should not be considered an environmentally sensitive habitat, or ESHA. As such, nothing in the City's approval on this project here should be understood as being in conflict with the Commission's previous actions.

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**EXHIBITS**

- Exhibit 1 – Regional Vicinity Map
- Exhibit 2 – Project Site Map and Appeal Zone
- Exhibit 3 – Excerpt of City Approved Project Plans
- Exhibit 4 – Excerpt of City Final Local CDP Action Notice
- Exhibit 5 – Appeal of City CDP Decision

**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-STC-22-0070 **raises no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603, and I recommend a **yes** vote.*

***Resolution to Find No Substantial Issue.*** *The Commission finds that Appeal Number A-3-STC-22-0070 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

## 2. FINDINGS AND DECLARATIONS

### A. Project Description and Location

The City-approved project is located at the site of the former Gateway School fronting Pelton and Eucalyptus Avenues on the western side of the City of Santa Cruz. The entire project site is a 6.97-acre property owned by the Oblates of St. Joseph and is surrounded by single-family homes to the north and west, Lighthouse Field State Beach to the south, and West Cliff Drive and the Pacific Ocean to the east. The site itself is comprised of multiple buildings and uses, including the St. Joseph church on the eastern side closest to the ocean and fronting West Cliff Drive, and the former school buildings on the western/inland side fronting Eucalyptus Avenue. On the eastern side of the project site near the church is West Cliff Drive, which is a major public access promenade along the bluffs that provides access to popular coastal recreation sites such as Steamer Lane, Its Beach, and Mitchell's Cove.

The City-approved project would combine five existing parcels<sup>3</sup> into two and adjust their boundaries to better demarcate the church structure on the east from the residential structure on the west, demolish two of the former school buildings (totaling approximately 28,417 square feet), and construct a 76-unit two-story senior housing facility of approximately 74,218 square feet. In terms of the housing units, the project includes studio, one-bedroom, and two-bedroom units consisting of 59 assisted living

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<sup>3</sup> Per the City, the site is comprised of five legal lots with two APNs.

units with a total of 76 beds, 15 memory care units with a total of 19 beds, and two affordable units with a total of two beds. The proposed senior housing development would be constructed mainly on the western parcel, while the eastern parcel would preserve the existing church and historic residences. The project also includes associated development, including parking, landscaping, and grading/site improvements.

Roughly half of the almost seven-acre site is located within the appeal boundary (i.e., within 300 feet of the inland extent of the coastal bluff in this case). The portion of the property that is within this appeal jurisdiction is the eastern portion developed with the church. However, that portion of the site is generally to remain as-is (i.e., development is generally not proposed on that portion of the property as part of this project). The vast majority of the project is located on the western side of the site that is outside of the appeal boundary. In fact, there are only three components of the project within the appeal boundary: 1) eight new parking spaces and associated landscaping and pathways connecting the parking lot to the senior housing facility; 2) the relocation of a meditation garden from the Gateway school area to the church property along West Cliff Drive; and 3) portions of the lot line adjustment combining the five parcels into two.

See **Exhibit 1** for a location map, see **Exhibit 2** for a map demarcating the appeal boundary and appealable project components, and see **Exhibit 3** for the approved project plans.

### **B. City of Santa Cruz CDP Approval**

On October 6, 2022 the City of Santa Cruz Planning Commission approved a CDP for the proposed project. The Planning Commission approval was appealed by the current Appellants and by the Applicant to the City Council which, after deliberation, denied the appeal of the current Appellants and upheld the appeal of the Applicant on November 29, 2022, thus constituting the City's final CDP decision. The Coastal Commission's Central Coast District Office received the City's Final Local CDP Action Notice (see **Exhibit 4**) on December 5, 2022, and the Coastal Commission's ten-working-day appeal period for this action began on December 6, 2022, and concluded at 5 p.m. on December 19, 2022. The Central Coast District Office received one valid appeal (discussed below) 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 for a major public works project (including a publicly financed recreational facility and/or

a special district development) or an energy facility is appealable to the Commission. This City CDP decision is appealable to the Commission because part of the project site is within 300 feet of the inland extent of the beach and the seaward face of the coastal bluff.<sup>4</sup>

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b)(2) of the Coastal Act requires the Commission to conduct the de novo portion of the hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission considers the CDP application ‘de novo’ (upon making a determination of “substantial issue”) and finds that the proposed development is in conformity with the certified LCP, the Commission may issue a CDP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is not located between the nearest public road and the sea and thus this additional finding would not need to be made if the Commission were to approve the project following the de novo portion of the hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons opposed to the project who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding the substantial issue question must be submitted in writing. Any person may testify during the de novo CDP determination stage of an appeal (if applicable).

#### **D. Summary of Appeal Contentions**

The Appellant contends that the City’s approval of the CDP for the project violates applicable LCP provisions because the project will generally adversely impact coastal resources, particularly sensitive monarch butterfly habitat at the adjacent Lighthouse Field State Beach, as well as to water quality and public coastal access from traffic impacts, and that the project is located in a hazardous location. See **Exhibit 5** for the appeal contentions.

#### **E. Substantial Issue Determination**

##### **1. Substantial Issue Background**

The term substantial issue is not defined in the Coastal Act. Rather, the Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603 (Section 30625(b)(2)). And the Commission’s regulations simply indicate that the Commission will hear an appeal unless it “finds that the appeal raises no substantial issue” (California Code of Regulations, Title 14, (CCR) Section 13115(b)). CCR

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<sup>4</sup> Which is denoted as the Shoreline Protection Overlay (SP-O) area under the LCP.

Section 13115(c) also provides that the Commission may consider the following five factors when determining if a local action raises a significant issue: 1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP; 2) the extent and scope of the development as approved or denied by the local government; 3) the significance of the coastal resources affected by the decision; 4) the precedential value of the local government's decision for future interpretations of its LCP; and 5) whether the appeal raises only local issues, or those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In this case, for the reasons discussed further below, the Commission determines that the appeal regarding the City's approval of a CDP for the project does not present substantial LCP conformance issues.

As a threshold measure, it's important to note that very little of the project is located within the Commission's appeal jurisdiction and thus eligible for appellate review in this substantial issue determination. The Commission's appeal jurisdiction at this site extends 300 feet inland from the inland extent of the coastal bluff, which in this case includes a very small portion of the project site. In fact, the only physical development within the Commission's appeal jurisdiction is the relocation of a meditation garden, construction of some eight parking spaces, and some landscaping and pathways to connect the new parking spaces with the residential facility. Thus, the vast majority of the site and the project, including all of the project's residences, is not within the Commission's appellate jurisdiction and therefore *not* subject to Commission review.<sup>5</sup> This minor development scope subject to appellate review in and of itself suggests a finding of no substantial issue.

However, even when broadly reviewing the appeal contentions in light of the entire project, the project still does not suggest substantial LCP conformance issues, as described herein.

## **2. Coastal Habitat Areas**

As described above, the City-approved project sits on a formerly developed site with existing buildings, landscaping, and other infrastructure. The project site is adjacent to Lighthouse Field State Beach, an open-space area that is utilized by the public for walking trails, picnicking, and access to the coast. The park is characterized by meadow, grassland, and some forested areas and hosts a documented overwintering site for monarch butterflies in a forested grove on the northeast side of the park. The approved project would not result in any development at Lighthouse Field State Beach and is separated from the park by Pelton Avenue. See **Exhibit 2** for project site map. The Appellant contends that the approved project raises LCP consistency issues because of its proximity to Lighthouse Field State Beach and its effect on sensitive

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<sup>5</sup> Per Coastal Act Section 30603, the only part of the project eligible for review in this Substantial Issue determination is the portion of the project within the Commission's appeal jurisdiction. If the Commission were to find Substantial Issue, then the entirety of the project would be subject to a de novo CDP review.



monarch butterfly habitat. The Appellant argues that the project is inconsistent with LCP Environmental Quality Policy 4.5,<sup>6</sup> which requires protection of rare, endangered, sensitive, and limited species, and the habitats that support them, because the environmental review did not adequately consider the project's effect on surrounding coastal habitats. The Appellant also argues that the project is not infill development and that the project site does have environmental value.

The LCP requires the protection of rare and sensitive habitats more broadly, with additional policies protecting monarch butterflies and their habitats specifically. LCP Environmental Quality Element 4.5.3 states "*Protect monarch butterfly overwintering sites and ensure adequate buffering of these sites from development*" and Environmental Quality Policy 4.5.3.2 requires that development in the vicinity of designated monarch butterfly sites undergo an environmental impact analysis that identifies avoidance and minimization measures to ensure continued habitat protection. As identified in Map EQ-9 of the City's LCP, the project site is depicted as containing potential monarch butterfly habitat; however, the location of potential monarch habitat is denoted generally, and the LCP specifically requires further study to determine precise habitat locations so as to ascertain potential impacts. In conformance with this LCP directive, the Applicant prepared a biotic report to assess the presence of sensitive species or habitats, as the closest project elements are located approximately 160 feet from a known monarch butterfly roost. Ultimately, the report found that the proposed development site does not contain monarch butterfly roosting habitat and should not have any direct or indirect monarch butterfly impacts, as summarized by the City's findings:

*The biotic evaluation included several site visits in November 2019 and October through December 2021. The evaluation found no roosting habitat on the project site and limited potential for roosting habitat in the few of the trees proposed to be retained on the remaining church property; roosting was not observed in those trees during any of the site visits. The Biotic Assessment also concluded that it is not expected that monarchs would use the project site for roosting due to the lack of protection from prevailing wind and other features. The Biotic Assessment and subsequent reviews did not identify direct or indirect project impacts to the known monarch roost site, including potential indirect impacts resulting from project lighting and automobile traffic, including vehicle lights. During the site visits, the biologist observed monarch butterflies flying on the project site and nectaring on flowering ornamental plants within maintained gardens on the church property, which will not be disturbed as part of the proposed project. The project's new landscaping includes species that can provide nectaring value to butterflies visiting the site. (Planning Commission Agenda Report, p.5)*

While the assessment didn't identify any likely adverse direct or indirect project impacts, to be protective, it nonetheless listed best management practices (BMPs), which were

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<sup>6</sup> Environmental Quality Policy 4.5 states: "Continue the protection of rare, endangered, sensitive and limited species and the habitats supporting them as shown in Map EQ-9 or as identified through the planning process or as designated as part of the environmental review process."

codified into the CDP via conditions of approval. These BMPs include commencing construction after temperatures reach above 55 degrees Fahrenheit to allow butterflies to emerge from nocturnal torpor; to direct trucks and equipment to enter and exit the site along Pelton Avenue from the east towards West Cliff Drive to minimize vibration and exhaust impacts; to design landscaping so as to avoid excess shading of nectar resources; provide onsite water sources near nectar gardens; install and maintain predator-proof waste bins; eliminate populations of yellow jackets, grey squirrels, and rats on the property using non-toxic methods; restrict use of seed feeders that attract squirrels; utilize leaf vacuums instead of blowers; and prohibit use of neonicotinoids and other pesticides known to impact monarchs.

The City codified these requirements into the CDP as conditions of approval. Notably, Condition #33 requires the Applicant to implement all recommendations from the the biotics report. Condition #56 includes a number of requirements to minimize excessive lighting of the Lighthouse Field monarch grove including: 1) prohibiting right-turns out of the Pelton Avenue driveway to divert outbound trips away from the monarch grove and avoid casting headlight glare into the grove; 2) requiring the installation (and ongoing maintenance) of signage that prohibits the use of high beams until drivers are away from the monarch grove; and 3) requiring all exterior lighting to be downcast to avoid glare/illumination of adjacent properties. And finally, Condition #61 requires the Applicant to consult with a butterfly ecologist during preparation of the landscaping and lighting plans, and to “make every effort to make the landscape and lighting support a thriving monarch butterfly population.” Condition #61 further requires that these plans be reviewed and approved by City planning staff during the building permit review process to ensure adequate study and implementation. See **Exhibit 4 (FLAN)** for the complete conditions of approval.

In sum, the project is located in such a manner as to avoid direct impacts to monarch habitat, and the City conditioned the CDP to include biologist-recommended measures to avoid indirect impacts. Accordingly, the City appropriately followed the LCP by studying, identifying, and addressing potential monarch butterfly impacts. As such, the project does not raise any substantial LCP conformance issue.

It should also be noted that the Appellant alleges the project is inconsistent with previous habitat protocols specified in CDP A-3-STC-01-045, approved by the Commission in 2002 that allowed for an expansion of the St. Joseph church parking lot along Pelton Avenue and immediately adjacent to the eight new spaces the City approved as part of this appeal. However, there is no conflict between the two. In the 2002 approval, and based on extensive study of monarch butterfly behavior and habitat at Lighthouse Field<sup>7</sup>, the City and Commission found that development at the St. Joseph site would not adversely impact monarch butterfly habitat, including because of the distance between the site and monarch roosts, and that the project site did not constitute an environmentally sensitive habitat area. The study recommended a 150-foot buffer between new development and monarch habitat, which this project meets

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<sup>7</sup> Leong, K. L. H. 2002. Lighthouse Field State Beach Monarch Butterfly Overwintering Site: first year study. Submitted to the City of Santa Cruz Department of Parks and Recreation on August 1, 2002.

(i.e., the nearest project component is a new driveway on Pelton Avenue located some 160 feet away, and the residential structure is located some 300 feet away). In sum, there does not appear to be any discrepancy between the Commission's 2002 CDP approval and the City's 2022 approval of this project as it relates to monarch butterfly habitat.

In conclusion, the City undertook extensive analysis of potential project impacts to monarch butterfly habitat to ensure such impacts were either avoided or mitigated. The City required a biological assessment to ensure appropriate siting and design so as not to directly or indirectly impact the monarch butterfly grove, and incorporated as conditions of approval the recommendations of the assessment, including by prohibiting certain types of pesticides, lighting restrictions, and planting with native vegetation conducive to monarch habitat for area landscaping. As such, the City appropriately followed its LCP and provided factual support to justify its approval. For the above reasons, the City's approval of a CDP for the project does not raise a substantial issue with respect to biological resources.

### **3. Other LCP Contentions**

*Traffic/Parking Impacts, Neighborhood Compatibility, and Public Recreational Access*  
The Appellant contends the City-approved project would increase traffic and decrease parking availability in the area, thereby impacting coastal access. The Appellant specifically cites LCP Land Use Element 5.6:

*Require land use development to integrate into the larger circulation system by interconnecting its system of roads, pedestrian, and bike paths with existing facilities and also design access to nearby areas in a manner that minimizes the necessity for automobile travel and potential automobile and pedestrian/bike conflicts.*

To address parking and traffic issues, the City relied on a traffic study prepared by the Applicant to assess potential project impacts. The traffic study concluded that the proposed project would generate considerably fewer trips than the previous site's use as a school and would not impact the surrounding street network. Specifically, when the site was used as a school, there was significant traffic congestion (on average, a total of 768 car trips per day, see Appendix A) within the residential area during pickup and drop off hours, with cars idling in the street at the start and end of the school day. In comparison, the proposed project will have fewer vehicle trips (estimated at 258 trips per day, see Appendix A) and will avoid high-traffic congestion at specific times of the day. The traffic study anticipates that not only will the proposed project be less impactful from a traffic perspective relative to the former school, but that senior housing in general tends to have less of a travel demand than other forms of residential use and requires fewer parking spaces, because many residents would not have cars<sup>8</sup>. The Applicant's traffic study and project materials also concluded the project would provide adequate parking spaces to accommodate the project's parking demands (the study found peak daily project parking demand would require 40 parking spaces; the project is proposed

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<sup>8</sup> The study cited the manual *Parking Generation*, 4<sup>th</sup> Edition, published by the Institute of Transportation Engineers, 2018.

to have 42 parking spaces plus an additional 8 spaces on the church property), including for both visitors and staff, and would not result in the loss of any existing on-street public parking spaces used by coastal visitors.

In terms of the CDP itself, the City-approved project includes the construction of 42 new parking spaces of which four will include EV charging stations—two more spaces than required by the City’s LCP<sup>9</sup>. The City also conditioned the CDP to include mechanisms to address neighborhood compatibility and parking post-construction should the need arise. Specifically, for neighborhood compatibility concerns, Condition 4 gives the Planning Commission broad authority to revoke or amend the CDP if the Planning Commission finds the use to be incompatible with the surrounding permit. And for parking, Condition 56 requires that no more than 21 employees be onsite at any given time, and if the number of employees ever exceeds 21, then the Applicant is required to modify their permit to accommodate the increased parking needs. Regarding access, circulation, and neighborhood compatibility more broadly, the City-approved project also requires all commercial deliveries to enter and exit the property on West Cliff Drive (instead of Pelton/Eucalyptus Avenues) [see Condition 56], in an effort to minimize traffic impacts to the adjacent neighborhood streets. Accordingly, the CDP as conditioned by the CDP appears to include enough parking to accommodate demand at the site, and the CDP is conditioned to allow for oversight including potential CDP revocation and/or modified parking requirements to ensure that the site is adequately parked and compatible with the surrounding areas.

Finally, contrary to the Appellants’ contention that the project would adversely impact coastal access, the City-approved project includes minor coastal access improvements including new walkways through the property and new sidewalk along Pelton Avenue<sup>10</sup>. The new sidewalk, pathways, and garden areas will all be open to the public, providing better connections from Eucalyptus Avenue with West Cliff Drive, Pelton Ave, and surrounding coastal accessways, thereby providing an improvement to area circulation in conformance with the goals of the LCP.

In sum, the city-approved project adequately addresses neighborhood compatibility, parking/traffic, and would not adversely impact coastal recreational access. For these reasons, the City’s approval of a CDP for the project does not raise a substantial LCP or Coastal Act conformance issue with respect to traffic/parking, neighborhood compatibility, and public recreational access.

#### *Coastal Hazards and Water Quality*

Finally, the Appellant alleges the project will result in adverse water quality and is subject to coastal hazards. With respect water quality, the Appellant contends that the project will lead to a significant increase in paving and concrete, ultimately preventing stormwater from penetrating into the ground and discharging runoff into Monterey Bay. However, the location of development is on an urbanized parcel that already houses

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<sup>9</sup> The 42 spaces include two ADA spaces, two ADA van-accessible spaces, and electric vehicle charging.

<sup>10</sup> These walkways will be ADA accessible.

buildings, parking lots, and driveways. The project site is approximately seven acres in total, but approximately half of this area will remain unchanged, leading to development on roughly 3.5 acres that already houses vacant school buildings. The surrounding area is mainly residential homes, paved streets, and other parking areas. In addition, the Applicant completed a Stormwater Control Plan, which includes stormwater best management practices (BMPs) and Low-Impact Development (LID) standards, which have been included into the project (the use of native landscaping/bioswales for site drainage, etc.). The City also conditioned the CDP to require a Construction Activities Stormwater General Permit to minimize stormwater/pollution during construction activities (Condition 27), and the preparation of a Stormwater Pollution Prevention Plan prior to any soil disturbance. The project proposed and was required by the City to follow BMPs in regard to stormwater and erosion control, such as maintaining a spill response kit and spill response team on site, preventing pest control measures from draining into the storm drain system, limiting pesticide use, storing all construction equipment or materials within a covered and protected area, cleaning all equipment and vehicles off-site, and repairing vehicles and equipment offsite.

And finally, with respect to coastal hazards, all residential components of the project are located well over 300 feet inland from the coastal bluff and separated by public infrastructure and other development, including the St. Joseph church and West Cliff Drive. The City also determined that the site is not within the 100-year and 500-year FEMA floodplain projections. In sum, the project is not subject to direct ocean forces, and the City found it stable and adequate for development.

For these reasons, the City's approval of a CDP for the project does not raise a substantial LCP or Coastal Act conformance issue with respect to coastal hazards or water quality.

#### *Other Contentions*

The Appellant also contends that the Applicant does not have legal authority or standing to represent Oppidan and does not have a stake in the leasehold interest; that the owners of the property (Oblates of St. Joseph) were not properly included in the process; and lastly, that the leasing of the property is an improper transfer of land use and development. However, the only appropriate grounds for an appeal to the California Coastal Commission are issues related to the project's consistency with the certified LCP and the Coastal Act's public access policies. The Appellant does not cite any such policies in making these contentions. Thus, such contentions are not appropriate grounds for this appeal.

#### **4. Five Factors Analysis/Conclusion**

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity or public access, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of Coastal Act public access and/or LCP conformance. 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 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 City's approval of a CDP for this project does not raise a substantial issue of LCP conformance. First, as was discussed above, the City provided adequate legal and factual support to justify its approval, including through required biological, traffic, and water quality studies and incorporation of their recommendations as conditions of approval. Thus, based on the record provided there is adequate factual and legal support for the City's decision. And this factor weighs towards no substantial issue.

Second, the extent and scope of the project is also very minimal in two regards. The first is that only a small component of the project is within the Commission's appeal jurisdiction, so the question of whether there is a substantial issue is even more narrow and naturally lends itself to there being no substantial issue since the scope and scale is small. The second is that both the appealable portion and the broader project have no adverse impacts on any sensitive coastal resources, and thus the project's extent, scope, and coastal resource impacts are minimal. Therefore, this factor weighs toward no substantial issue. Third, in regard to the projects precedential value, that value is minimal given, again, given the lack of impacts to coastal resources. Finally, the project does not raise issues of regional or statewide significance, because it is a local housing project with minimal coastal resource impacts.

Thus, the City's approval of a CDP for the proposed project does not raise a substantial LCP conformance issue. The project is a much-needed housing facility within a generally well-developed part of town that includes on-site affordable senior housing units. The City appropriately identified, studied, and avoided impacts to any sensitive coastal resources, and the project can be found consistent with the LCP. This fact, in conjunction with the fact that so little of the project is part of this appellate substantial issue review, all lends itself to a no substantial issue recommendation and a decline to take up the appeal in a de novo review. For the reasons stated above, the Commission finds that Appeal Number A-3-STC-22-0070 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

### 3. APPENDICES

#### **A. Substantive File Documents<sup>11</sup>**

- City of Santa Cruz Permit File CP20-0068

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<sup>11</sup> These documents are available for review from the Commission's Central Coast District office.

- Coastal Commission Appeal File A-3-STC-22-0070
- Coastal Commission CDP File A-3-STC-01-045

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

- City of Santa Cruz