

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
PHONE: (415) 904-5260
FAX: (415) 904-5400
WEB: WWW.COASTAL.CA.GOV



Th8a

Filed: 01/09/2023
Action Deadline: 06/08/2023
Staff: EM -SF
Staff Report: 4/21/2023
Hearing Date: 5/11/2023

STAFF REPORT CDP APPLICATION

Application Number: 2-22-0004
Applicant: City of Pacifica
Project Location: In the ocean and on the sandy beach at Pacifica State Beach (also known as Linda Mar Beach) in the City of Pacifica, San Mateo County
Project Description: Implement a program to manage surf camps and schools
Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

Pacifica State Beach, also known as Linda Mar Beach, is a sandy crescent beach running along some three-quarters of a mile of shoreline at the City of Pacifica's southern end.¹ The beach here is extremely popular, not only for locals, but also for visitors from the greater Bay Area given its close proximity. It provides parking lots, restrooms, showers, and close access to nearby businesses and restaurants, only increasing its appeal to the public. It is also, for those who surf, a well-known 'learners' surfing break that can provide ideal conditions for those just learning to surf for the first time. As a result, the beach and surf here is also very popular for not only individuals learning to surf, but also organized groups, both for-profit and non-profit groups, giving surf lessons.

Since 2005, the City of Pacifica has operated a surf camp/surf school permitting system without the benefit of a coastal development permit (CDP). That system was only structured to account for commercial/for-profit users which led to conflict between those

¹ Although a State Park unit, the beach is managed by the City of Pacifica via an operating agreement with State Parks.

commercial operators utilizing the permitting structure and non-profit surf camps/schools also attempting to use the beach and surf break, where many of the non-profits seek to provide coastal access to children of all ages who are normally not offered such opportunities. In an attempt to be more inclusive, the City convened a task force and received input from a number of parties, including both commercial and non-profit groups, and developed a new proposed management program structured to provide access to both for-profit and non-profit surf camps and schools. While well-intentioned, the City's proposed program largely mimics its previous program, with the addition of allowing two permit program spots to non-profit groups, where the application process would include additional requirements on these groups that aren't required of for-profit groups (e.g., requiring non-profits to demonstrate their ability to serve underrepresented communities, to explain how they contribute to equitable access to surfing in the Bay Area, to demonstrate cultural responsiveness in their programming and staff training, to renew their application every three years instead of every five years like commercial groups, and to have their application reviewed by a newly created review board when commercial groups aren't required, etc.). Taken together, these additional requirements actually create additional obstacles and barriers for non-profit groups attempting to access the coast at Pacifica State Beach, representing a barrier to equitable access, and raising Coastal Act public access and environmental justice concerns.

Staff has since worked closely with the City and State Parks, as well as both commercial and non-profit surf camps and schools, to address these concerns, and the result of that collaboration is a revised program that simplifies registration procedures, allows for calendaring transparency, expands the area of use (and thus the amount of potential participants for all types of groups), accounts for monitoring and reporting, and includes a community surfing agreement designed to make sure all feel welcome at the beach and in the surf. Perhaps most importantly, the revised program truly does accommodate access for all group types equitably, and all parties are essentially in agreement on the revised parameters. Thus, staff recommends that the Commission approve a CDP as conditioned, where the motion to do so is found on page 4 below.

TABLE OF CONTENTS

1. MOTION AND RESOLUTION 4
2. STANDARD CONDITIONS 4
3. SPECIAL CONDITIONS 5
4. FINDINGS AND DECLARATIONS..... 10
 A. Project Location and Background..... 10
 B. Project Description 11
 C. Standard of Review 13
 D. CDP Determination..... 13
 1. PUBLIC ACCESS AND RECREATION..... 13
 2. ENVIRONMENTAL JUSTICE 16
 3. OTHER..... 20
 4. VIOLATION 20
 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) 21

APPENDICES

Appendix A – Substantive File Documents

Appendix B – Staff Contacts with Agencies and Groups

EXHIBITS

Exhibit 1: Project Location

Exhibit 2: Project Area Photos

Exhibit 3: City Proposed Surf Camp/School Program

Exhibit 4: City-State Parks Operational Agreement

Exhibit 5: Expanded Area of Operations

Exhibit 6: Commercial and Non-profit Review Matrices

1. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a CDP for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission **approve** Coastal Development Permit Number 2-22-0004 pursuant to the staff recommendation, and I recommend a **yes** vote.*

Resolution to Approve CDP: *The Commission hereby approves Coastal Development Permit Number 2-22-0004 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the Permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

2. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Applicant to bind all future owners and possessors of the subject property to the terms and conditions.

3. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Approved Project.** This CDP authorizes the City of Pacifica to manage both commercial and not-for-profit surf schools, surf camps, and similar such endeavors seeking to provide surfing lessons and/or surf experiences (i.e., camps, workshops, and trainings) on the beach and in the ocean at Pacifica State Beach (“User Groups”) consistent with its terms and conditions. The CDP is intended to provide a simple way for such User Groups to register with the City, to make reservations for use times on a shared publicly available calendar, to provide for required qualifications and rules of use, and to create equitable surfing access. This CDP is not intended to affect the manner in which the general public accesses the beach and ocean at Pacifica State Beach, other than by ensuring that User Groups do not significantly adversely affect such pursuits, and it does not otherwise modify public access use parameters at Pacifica State Beach.
- 2. Management Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit for Executive Director review and written approval two sets of a Pacifica State Beach Surf Management Plan. The Plan shall clearly identify the manner in which surf schools, surf camps, and similar such endeavors seeking to provide surfing lessons and/or surf experiences (i.e., camps, workshops, and trainings) on the beach and in the ocean at Pacifica State Beach (again “User Groups”) are to be managed, with explicit detail regarding User Group qualifications, application/registration process, reservations, areas of operations, maximum number of participants, and operational provisions. The Plan shall, at a minimum, be consistent with and incorporate all of the following:
 - a. User Group Qualifications.** All User Groups (whether commercial or not-for-profit) shall meet the following minimum eligibility requirements:
 - 1. User Group Types.** Commercial User Groups are those that operate for-profit, including local surf shops, and hold a valid and up-to-date City of Pacifica business license. Not-for-profit User Groups are those that are exempt from taxation pursuant to Internal Revenue Code Section 501(c)(3), including groups that are fiscally sponsored by a 501(c)(3) group. Proof of User Group type shall be provided via either a copy of such business license or documentation of such 501(c)3 status.
 - 2. User Group Requirements.** All User Groups shall also be required to provide:
 - a. Self-verification of the use of proper equipment in good condition, and trained staff that can effectively execute User Group objectives.
 - b. A curriculum that includes beach and ocean safety and coastal stewardship, a safety plan, and proof of current CPR certification on file for each staff member (preferably with lifeguarding certification by at least one staff on duty at any time).

- c. A Certificate of Insurance that accommodates at least \$3 million in liability insurance for the current year, and that names the City of Pacifica as an additionally insured/certificate holder.
 - d. Proof of workers' compensation policy of at least \$100,000, unless the User Group has no employees.
 - b. **Registration Process.** Prior to their use of the beach/ocean for activities under this CDP, all User Groups (whether commercial or not-for-profit), regardless of each User Groups past operation at Pacifica State Beach, shall apply to the City to be a registered User Group. The City may charge a fee for such application/registration, where such fees per registered year shall be no more than (1) \$1,120 for commercial User Groups serving up to 12 participants at a time, (2) \$1,340 for commercial User Groups serving between 13 and 25 participants at a time, and (3) \$200 for not-for-profit User Groups serving up to 25 participants at a time. User Groups serving more than 25 participants at a time shall be prohibited. Applications to be a registered User Group shall be accepted twice a year during the periods of December 1-21 and June 1-21, shall be reviewed by City of Pacifica Parks, Beaches and Recreation ("PBR") staff and processed by PBR within 30 days of receipt, and associated registrations shall be valid for 5 years from the date of approval. User Groups shall only be allowed registered status if they are a signatory to the Community Surfing Agreement (see **Special Condition 3**). Updated safety plans, CPR certifications, and insurance documents meeting the above requirements shall be submitted at least once per year from the time of registration to maintain registered User Group status.
 - c. **Calendaring/Scheduling System.** All registered User Groups shall submit desired dates and times (divided into morning (before noon) or afternoon (after noon) sessions) for use to City PBR staff, including a point of contact for scheduling purposes and a projected number of participants for each use event at the time of registration. Additional and/or different dates and times may be requested during either of the two registration periods, or can be requested on an as-needed basis by contacting PBR staff, and PBR staff will update the calendar to reflect the changes as soon as possible if there are available dates and times. PBR staff shall input such information into a "Shared Surf Community Calendar" that shall be made available via publicly available platform (e.g., Sharepoint, etc.) and that shall identify use periods in a clear manner for use by the Permittee and User Group participants for calendaring/scheduling activities. The Shared Surf Community Calendar shall be regularly updated, shall clearly illustrate User Group activity days/times/participants, shall allow users to easily identify degree of anticipated usage for any given day, shall at a minimum be visible to all registered User Groups, and shall only be allowed to be updated by PBR staff.
 - d. **Area of Operations.** Registered User Groups shall be allowed to operate on beach property owned by the City of Pacifica and State Parks as outlined in the City-State Parks "Pacifica State Beach Operating Agreement" and as expanded by the "Expanded Area of Operations" (see **Exhibit 4**, and updated areas as

illustrated in **Exhibit 5**). User Groups may only operate on beach property owned by State Parks provided all equipment is handled with care and kept away from the general public as much as possible, and provided that the City assumes all responsibility and liability, and acknowledges and agrees that the State shall not be held liable for any injuries that occur while User Groups use State Parks property.

- e. **Maximum Allowed Use.** Maximum daily number of User Group participants at any one time shall be capped at 200 participants, where commercial and not-for-profit User Groups shall each be allotted a maximum of 100 participants for any given morning or afternoon session time.
- f. **Operational Provisions.** All User Groups shall abide by the preceding Management Plan provisions as well as by the following:
 - 1. **Reservations.** All registered User Groups shall use the calendaring/scheduling system to reserve days and times for participant events, where each such reservation shall specify the number of participants expected and a contact person for scheduling purposes.
 - 2. **Use Hours.** Allowed hours of use are daylight hours (i.e., one-hour before sunrise to one-hour after sunset) every day.
 - 3. **Instructors.** All instructors for each User Group activity shall be identified by wearing a colored jersey (in a different color than participants' jerseys), and User Groups shall maintain a ratio of at least one such instructor per every 5 students. All instructors under the age of 18 must be supervised by instructors that are age 18 and over if working with minors. Individual surfing by instructors shall be for demonstration and instructional purposes only.
 - 4. **Participants.** All participants for each User Group activity shall wear a matching-colored jersey that makes them easy to identify and shall wear adequate wetsuits as protection against the elements. At a minimum, participants that are surfing outside the primary impact zone (i.e., beyond the general whitewash area) and/or independently, shall be attached to their surfboards via leash.
 - 5. **Cancellations.** User Group activities may be canceled by PBR staff in the event of extreme weather conditions or other emergency events that create unsafe conditions for users. User Groups shall be notified (at least via email) in advance and shall also be notified when it is safe to resume activities.

All requirements above and all requirements of the approved Pacifica State Beach Surf Management Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Plan. Minor adjustments to the above requirements, as well as to the Executive Director-approved Plan, which do not require a CDP amendment or new CDP (as determined by the Executive Director) may be allowed by the Executive Director if

such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

- 3. Community Surfing Agreement.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit for Executive Director review and written approval two sets of a Memorandum of Understanding (MOU) that defines a Community Surfing Agreement that shall, at a minimum, identify Pacifica State Beach and the ocean offshore as an area often frequented by beginner surfers, and establish a code of conduct that is inclusive and welcoming to all users and all levels of surfing. The MOU shall be developed by the City working with the Executive Director, incorporating input from all known interested commercial and not-for-profit User Groups and State Parks. In order to become registered, all User Groups shall be required to become a signatory to the Executive Director-approved MOU, and the final Executive Director-approved Community Surfing Agreement shall be posted at Pacifica State Beach prior to CDP issuance, both in English and in Spanish, subject to Executive Director approval of all siting and design.
- 4. Annual Report.** The Permittee shall annually submit for Executive Director review and written approval two copies of an annual project report by December 31st of each year that this CDP remains in effect. The annual project report shall be an opportunity to understand how well the overall program authorized by this CDP is operating (including in terms of identifying and addressing any issues/conflicts), and to provide a means for adaptation of the program based on lessons learned from such operations. The annual project report shall, at a minimum, include:

 - a. User Data.** The Permittee shall document information collected via the calendaring/scheduling system (including the number of registered User Groups, reservations made by each registered User Group, the number of participants per reservation, number of surfing lessons and/or surf experiences per days and sessions (i.e., morning and afternoon) etc.), and shall also collect actual usage data from all registered User Groups in a manner that allows easy comparisons to be made between the two, including in terms of data associated with each User Group's actual usage (e.g., total number of surfing lessons and/or surf experiences and actual number of participants for the year). All such data shall include both narrative and illustrative (e.g., tables, graphs, photos, etc.) explanations of the operation of the program, including in terms of any noteworthy events or other issues that may have impacted User Group participation levels, and details related to yearly trends with supportive documentation.
 - b. Accounting.** An accounting of revenues and expenditures associated with the program, including, at a minimum, an accounting broken down by at least month and year of the amount of fees collected, and the expenditures from the fees collected, including broken down by expenditure categories (e.g., PBR salaries, beach maintenance, etc.).
 - c. Evaluation.** An assessment of the overall effect of the program applied via this CDP, including its related impact to general beach and ocean access, including

beach crowdedness as a result of User Group activities, and overall beach management and public recreational utility at Pacifica State Beach. The assessment shall also discuss any barriers to implementing the program or to participation in the program. Each report shall include past reports as appendices.

- d. Adaptive Management.** Recommendations on potential modifications to make the program operate more effectively and efficiently, and to better protect coastal resources, shall be proposed in each annual project report. Such measures may be approved by the Executive Director, and, if so, shall be implemented pursuant to the time frame identified in such approval.
- 5. Five-year Authorization.** The development authorized by this CDP shall be authorized for a term of 5 years following Commission approval (i.e., through May 11, 2028). The Executive Director may extend the CDP term by up to 5-year increments if the Permittee submits a request to extend at least 90 days before the end of the term, and if the Executive Director determines that there are no changed circumstances that would warrant a Coastal Commission re-review of the approved program. If the Executive Director determines that a re-review is required, then the Permittee shall submit a new CDP application for Commission consideration, and the program shall be stayed (i.e., not operated, with signs and related program components bagged or otherwise hidden) pending a Coastal Commission decision on it. If the CDP expires or if the program is not authorized by the Coastal Commission as part of any re-review, then all registered User Groups shall lose any reservation and/or other CDP status, and beach and ocean use shall revert to general public beach and ocean access parameters.
- 6. Assumption of Risk.** The Permittee acknowledges and agrees in relation to this CDP and the development that it authorizes: (a) to assume all risks; (b) to unconditionally waive any claim of damage and/or liability against the Commission and/or its officers, employees, agents, successors and/or assigns; (c) to indemnify and hold harmless the Commission and its officers, employees, agents, successors and/or assigns against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement, including as it relates to any damages to public and/or private properties and/or personal injury; and (d) that any adverse effects to property or people caused by the development authorized by this CDP shall be fully the responsibility of the Permittee.
- 7. Liability for Costs and Attorneys' Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and/or (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and/or assigns challenging the approval or issuance of this CDP, the interpretation and/or enforcement of CDP terms and conditions, or any other matter related to this CDP. The Permittee shall reimburse the Coastal Commission within

60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission, its officers, employees, agents, successors and/or assigns.

4. FINDINGS AND DECLARATIONS

A. Project Location and Background

The proposed project is located at Pacifica State Beach in the City of Pacifica in San Mateo County (see **Exhibit 1**). Pacifica State Beach, also known as Linda Mar Beach, is the southernmost beach area in the City of Pacifica. It is an approximately three-quarter mile long crescent-shaped beach that is located at the mouth of the San Pedro Valley fronting the Linda Mar residential neighborhood. The beach area is generally bounded by the Pacific Ocean to the west, rocky headlands to the north and south, and Highway 1 to the east. East of Highway 1 is residential and commercial development. Although Pacifica State Beach is a California State Parks unit, it is actually a mix of City-owned and State Park-owned property, and it is managed by the City through an operating agreement with State Parks (see **Exhibit 4**).²

Pacifica State Beach is one of the most popular beach recreational areas south of San Francisco, particularly for activities such as ocean swimming and surfing. It provides parking lots, restrooms, showers, and close access to nearby businesses and restaurants, only increasing its appeal. The beach and its offshore waves are particularly popular with surfers and is likely the most used beach for surfing in this stretch of the California coast. It is also a well-known 'learners' surfing break that can provide ideal conditions for those just learning to surf for the first time. As a result, the beach and surf here is also very popular for not only individuals learning to surf, but also for organized groups, both for-profit and non-profit groups, giving surf lessons. The beach also has a back beach dune field on its northern end that is known to provide habitat for the western snowy plover, and this area is managed for habitat purposes and is off-limits to general use.

Since 2005, the City of Pacifica has operated a surf camp/surf school permitting system without the benefit of a coastal development permit (CDP).³ That program has been overseen by the City of Pacifica's Parks, Beaches and Recreation Department (PBR), and it originally accommodated three for-profit commercial surf schools (two with a 25 student limit and one with a 12 student limit), and ultimately a fourth (with a 12 student limit)⁴ that was added in 2013, via a 'surf school permit'. In addition, local surf shops

² The agreement allows the City to "adopt rules and regulations for the use and enjoyment" of the beach and allows for surf camps and schools on City-owned property (or as a concession on State-owned property, subject to additional requirements). The agreement also requires that all revenue generated from the City operation and management be used only for maintaining and enhancing Pacifica State Beach itself, and requires the City to accept all liabilities of its management.

³ The Commission's Enforcement Division has an open enforcement case regarding the unpermitted development and is tracking the matter.

⁴ For a total maximum of 74 participants at any one time (i.e., 25 + 25 + 12 + 12 = 74).

who hold a City business license, but not a surf school permit, are allowed to provide individual and small group lessons with a maximum of 5 students. The program allows surf school permit holders to renew their permit annually, and as a result of the once-a-year registration, combined with the various requirements under the program, the same 4 for-profit commercial surf schools have been the only schools the City has authorized under the program. The program operates on City-owned parcels in the southernmost portion of the beach. See **Exhibits 1 and 2** for the project location and project area photos.

In June 2020, City Council received feedback from the community⁵ expressing concern over the City's surf school permitting process. In particular, many wrote or stated that they were concerned about racial equity relating to beach access and that the existing permitting process made it impossible for non-profits, like Brown Girl Surf⁶ and City Surf Project⁷, to apply for a surf school permit. In response, the City created the Pacifica Surf Camp/School Policy Advisory Task Force in late 2020 to consider potential changes to the City's surf program, including implementation of a Brown Girl Surf and City Surf Project-proposed Community Access Partner Permit (CAPP) program with the intent to provide equitable access for underrepresented groups. Ultimately, the Task Force didn't adopt the CAPP as proposed, but did identify a revised program, which is the basis for the City's proposed project.

B. Project Description

The City's proposed program essentially mimics its prior unpermitted program but adds the City's version of a CAPP program. The proposal includes surf school applicant qualifications that focus on basic administrative requirements such as submitting a Pacifica business license if appropriate, a facility use permit, price list of surf school fees and program structure/curriculum, copies of certificate of insurance, proof of workers compensation, safety plans, and CPR certification schedule of classes. The proposal further requires each group, whether commercial or non-profit, to attest to having good equipment and trained staff. The proposed program would also establish the number of schools allowed to hold a surf school permit (4 permit spots for commercial, and 2 permit spots for non-profits), require a ratio of five students per instructor, establish that all students must wear surf leashes, and that all instructors and students must wear an identifiable jersey. In addition, the proposed program would establish the area of operation allowed for surf schools, set limits on weekend surf school hours from 8 a.m. to noon, and further propose weekend limits of 10 or fewer students per school between noon and sunset. The proposed program also includes additional criteria applicable only to non-profit surf schools. These additional criteria focus on requiring the non-profit surf schools to provide proof that they are indeed a non-profit organization that focuses on serving lower income communities or underrepresented groups who face obstacles to accessing the coast. The non-profit surf schools do this by submitting documentation

⁵ In the form of approximately 30 emails/letters and 13 speakers.

⁶ Brown Girl Surf is a non-profit organization that works to build a more diverse, environmentally reverent, and joyful women's, girl's, and gender expansive surf culture by increasing access to surfing, cultivating community, amplifying the voices of surfers of color, and taking care of the earth.

⁷ City Surf Project is a non-profit organization that ensures equitable access to the ocean and the benefits of outdoor recreation by providing opportunities for Bay Area youth to learn surfing.

that verifies they provide their services for free or significantly subsidized rates, demonstrating that their organizations contribute to equitable access, and showing cultural responsiveness with their programming and with staff training. Non-profit surf schools would also have to prove that they have instructors with specific training and cultural competencies to address the needs of their participants.

In essence, the City's proposal aims to formally expand the allowable surf school permits to six, adding 2 non-profit permits to the existing 4 commercial permits, with the potential of adding more over the years. Such a program would mean that a maximum number of participants at any one time would be 98, with 74 spots allocated towards commercial surf schools and 24 for non-profit surf schools. It would also implement the concept of "load", which refers to the number of participants a permittee brings on the beach during any given time, with this load concept only applying to the non-profits.⁸ The City's indicates that its intention in this respect is to ensure that the beach and the surf remain a shared public resource available for both active and passive recreation, and that opportunities to use the beach for surfing for all schools, commercial and non-profit, are fairly allocated. To implement its load concept, the City also proposes to implement a calendaring system that would only apply to non-profit schools.

The City's proposed program also establishes that the application and evaluation process would be different for commercial versus non-profit schools. Both types of schools would apply via a "Request for Proposal" system, but commercial schools would only have to apply every five years, whereas non-profit schools would have to apply every three years, with the ability to review both types of applications every one or two years. Further, the reviewing bodies for each application would also be different between commercial and non-profit schools. Commercial surf school applications would be reviewed and approved by the PBR Commission using a scoring rubric based on applicant qualifications, while the non-profit schools would be reviewed by a newly created Community Application Review Board (CARB), which would consist of group members selected based on a strong understanding of diversity, equity, and inclusion in the outdoors and would be committed to the principle of increasing access to surfing for underrepresented groups. In the proposal, CARB would also apply a scoring rubric based on the proposed applicant qualifications, but it would include additional criteria for non-profit schools (see **Exhibit 6** for scoring rubric). As proposed, application fees would apply to both commercial and non-profit surf schools: commercial schools would pay \$1,120 per year for a small school and \$1,340 for a large school while non-profit school fees would be based on how many months they operate (i.e., \$93 for one month, \$280 for three months, \$560 for six months, \$840 for one months, and \$1,120 for a year).

See **Exhibit 3** for the City's proposed surf camp and surf school program.

⁸ For instance, non-profit surf schools would be allowed a total load of 24 students, split between the two non-profit surf school permits allocated, at any given time, with each group starting at 12. If one non-profit school does not use its full 12 spots, then it can transfer its unused student allotments to the other non-profit surf school. In other words, non-profit surf schools would operate on a sliding scale of sorts to share the 24 allocated spots.

C. Standard of Review

The proposed project is located within the Commission's retained CDP jurisdiction area, and thus the standard of review for this CDP application is the Coastal Act, with the City of Pacifica LCP providing non-binding guidance.

D. CDP Determination

1. Public Access and Recreation

Applicable Coastal Act Provisions

Coastal Act Sections 30210 through 30224 specifically protect public access and recreation. In particular:

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

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

Section 30212. *(a)Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby...*

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. ...*

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

Section 30221: *Oceanfront land suitable for recreational use shall be protected for recreational use and development ...*

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

In addition, Coastal Act Section 30240(b) also protects parks and recreation areas, such as the Pacifica State Beach area. Section 30252 also required Section 30240(b) states:

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

Analysis

Among the most important goals and requirements of the Coastal Act is the mandate to protect, provide, enhance, and maximize public recreational access opportunities to and along the coast, consistent with strong resource conservation principles. Within this guiding framework, the protection of, and priority for, lower-cost visitor and recreational facilities is explicitly identified. Further, the Coastal Act Section 30210 direction to maximize access represents a different threshold than to simply provide or protect such access and is fundamentally different from other similar provisions in this respect. In other words, it is not enough to simply provide access to and along the coast, and not enough to simply protect access—rather such access must also be maximized. This terminology distinguishes the Coastal Act in certain respects and provides fundamental direction with respect to projects along the California coast that raise public access issues, like this one.

As indicated above, Pacifica State Beach is very popular, particularly for surfing, thus restrictions affecting surfing access must be thoroughly reviewed to assure that access to the surf is maximized for all. However, since 2005, the City has operated a surf camp/surf school permitting system without the benefit of a CDP that was only structured to account for commercial/for-profit users, leading to conflict between those commercial operators and non-profit surf camps and schools also attempting to use the beach and surf break, where many of the latter were non-profits trying to bring kids to the ocean who may not otherwise normally get that chance. In an attempt to be more inclusive, the City convened a task force and received input from a number of parties, including both commercial and non-profit groups, and developed a new proposed management program structured to provide access to both for-profit and non-profit surf camps and schools. While well-intentioned, the City's proposed program largely mimics its previous program, with the addition of allowing two permits to non-profit groups, where the application process would include additional requirements on these groups that aren't required of for-profit groups (e.g., requiring non-profits to demonstrate their ability to serve underrepresented communities, to explain how they contribute to equitable access to surfing in the Bay Area, to demonstrate cultural responsiveness in their programming and staff training, to renew their application every three years instead of every five years (the renewal requirement for commercial groups), to have their application reviewed by a newly created review board when commercial groups aren't required, etc.). Taken together, these additional requirements actually create additional obstacles for non-profit groups attempting to access the coast at Pacifica State Beach, representing a barrier to equitable access, and raising Coastal Act public access concerns.

Commission staff has since worked closely with the City and State Parks, as well as both commercial and non-profit surf camp/schools, to address these concerns and the result of that collaboration is a revised program that simplifies registration procedures, allows for calendaring transparency, expands the area of use (and thus the amount of

potential participants), accounts for monitoring and reporting, and includes a community surfing agreement designed to make sure all feel welcome at the beach and in the surf. Perhaps most importantly, the revised program truly does accommodate access for all types of groups equitably.

Specifically, **Special Condition 1** identifies the approved project, and **Special Condition 2** identifies the parameters of a Surf Management Plan meant to be the 'bones' of the overall program and designed to capture in one place all of its parameters. That Plan provides for a revised registration and reservation system that will enable the City to efficiently process applications for user groups, whether commercial or non-profit, wishing to provide surf lessons at Pacifica State Beach. It provides for a clearly defined process that will provide a simple way for such User Groups to register with the City, to make reservations for use times on a shared publicly available calendar, to provide for required qualifications and rules of use, and to make surfing access open to all equally. Thus, increasing access to all User Groups. The Plan establishes clear user groups, registration requirements, calendaring particulars, area of operations, maximum number of participants allowed, and operational provisions. It also simplifies required qualifications, focusing on basic safety requirements and eliminating the additional criteria that was imposed on non-profit user groups alone. Finally, the program as conditioned clarifies fees, with non-profits given a reduced rate; allows for 5-years registrations for all types of groups; increases the area of operation, and thus the number of allowed participants (to 200, evenly split between for-profit and non-profit groups).

Special Condition 3 defines a community surfing agreement that is meant to identify Pacifica State Beach and the ocean offshore as an area often frequented by beginner surfers, and to establish a code of conduct that is inclusive and welcoming to all users and all levels of surfing. An MOU incorporating such an agreement would be developed by the City working with the Executive Director, and with input from all known interested commercial and non-profit user groups and State Parks. In order to become registered, all User Groups would be required to become a signatory to the MOU, and the agreement itself would be posted at Pacifica State Beach both in English and in Spanish. The overall intent of the agreement and MOU is to break down barriers to access, to recognize that the surfing community here is inclusive and welcoming, and to help foster a sense of collective 'buy in' that all parties will operate in good faith, helping others learn to surf in a way that respects all participants.

Special Condition 4 provides for monitoring and annual reports to ensure that the program is operating as envisioned, including to create equitable surfing access.

Special Condition 5 provides for a 5-year term for the CDP, with the ability for the Executive Director to extend that term by up to 5-year increments if the Executive Director determines that there are no changed circumstances that would warrant a Coastal Commission re-review of the approved program.

Taken together, the suggested conditions will allow the program to be more consistent with public access and recreation directives of the Coastal Act by lowering the barriers to use of the surf at Pacifica State Beach, providing a simple and clearly defined process for all types of User Groups that removes barriers to registration, removing cost

barriers to non-profit User Groups, enacting a clear scheduling and calendaring system that will enable User Groups to coordinate with each other, limiting the size of each User Group to accommodate as many groups as possible without any one group dominating the beach, and by allowing groups to operate during expanded hours from sunrise to sunset. Most of all, the suggested conditions assure that access for all group types is equitable. As so conditioned, the project can be found consistent with the Coastal Act's public access and recreation provisions.

2. Environmental Justice

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 through that lens, including specifically in this case how equality and environmental justice impact the ability of all Californians to access the beach and surf. 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, 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

Throughout California’s history, low-income communities, communities of color, and other communities with historically marginalized identities, generally referred to here as “underserved communities,” have often faced disproportionate burdens in accessing the California coastline due to geographic, economic, social, and cultural barriers.⁹ A spatial analysis of 2010 Census data across demographic groups and proximity to public shoreline access points in California shows that a majority of Californians (79.7%) live within 62 miles of the coast, but populations closest to the coast are disproportionately white, affluent, and older than those who live farther inland.¹⁰ Recognizing these inequities and their inconsistency with Coastal Act provisions ensuring maximum and equitable public access for all to the California coastline, the Commission further specifies in its Environmental Justice Policy that:

The Coastal Act’s mandates to provide maximum access and recreational opportunities for all, and to protect, encourage, and provide lower-cost visitor and recreational opportunities embody fundamental principles of environmental justice. The Commission reaffirms its longstanding commitment to identifying and

⁹ See, for example, Free the Beach! Public Access, Equal Justice, and the California Coast, by Robert Garcia and Erica Flores Baltodano, in the 2 Stanford Journal of Civil Rights and Civil Liberties (143, 2005).

¹⁰ See Coastal Access Equity and the Implementation of the California Coastal Act, by Reineman, et al, in the Stanford Environmental Law Review Journal (v. 36, pages 96-98, 2016).

eliminating barriers, including those that unlawfully privatize public spaces, in order to provide for those who may be otherwise deterred from going to the beach or coastal zone. The coast belongs to everyone, and access cannot be denied or diminished on the basis of race, ethnicity, income socio-economic status, or place of residence or other factors...

*Understanding that even nominal costs can be barriers to access, preserving and providing for lower-cost recreational facilities is also an environmental justice imperative. This includes recreational opportunities such as parks, trails, **surf spots**, beach barbecue and fire pits, safe swimming beaches, fishing piers, campgrounds, and associated free or low-cost parking areas. (emphasis added)*

In this case, the proposed surf management program would limit access to permit holders only and creates additional barriers specifically for non-profit user groups by including additional requirements and processes (e.g., requiring non-profits to demonstrate their ability to serve underrepresented communities, to explain how they contribute to equitable access to surfing in the Bay Area, to demonstrate cultural responsiveness in their programming and staff training, to renew their application every three years instead of every five years for commercial groups, and to have their application reviewed by a newly created review board when commercial groups aren't required, etc.). Taken together, these additional requirements, beyond what is required of commercial surf schools, actually create additional obstacles for non-profit groups attempting to access the coast at Pacifica State Beach which is a barrier to equitable access. This additional burden creates barriers to participation and use of coastal resources, inconsistent with the Coastal Act imperative to assure maximum access and recreational opportunities, including for non-profit user groups at Pacifica State Beach that cater to underserved communities.

To understand the concerns regarding potential barriers to access for non-profit user groups, Commission staff met with non-profit organizations such as Brown Girl Surf and City Surf Project. These non-profit groups indicated that while the project as proposed by the City provided them a potential avenue to have a surf school presence at Pacifica State Beach, it would still effectively exclude potential non-profit surf school activities. They expressed that for the program to be truly equitable, non-profit user groups should, at the very least, receive an equal number of student spots as commercial operations. They also indicated that they don't often have the capacity to navigate the various requirements imposed by the City's proposed program and expressed that the best solution for this would be to implement a system that is as simple and straightforward as possible. The non-profits also identified program fees as an additional barrier to entry, including as most non-profit organizations operate on grants. Further, they communicated that surfing culture at Pacifica State Beach is not always welcoming to beginner surf user groups, in particular those serving underrepresented communities. Creating a sense of belonging and community at Pacifica State Beach is important to maximizing public access, as underserved communities do not always feel welcome at public beaches like this one.

In addition to meeting with Brown Girl Surf and City Surf Project, Commission staff also met with a statewide working group of other non-profit surfing organizations. These

organizations expressed similar concerns regarding the challenges of having to navigate numerous permit/application processes that differ from beach to beach. Commission staff also met with one commercial school, Adventure Out, who expressed support for the creation of an equitable program that would allow non-profit user groups to truly feel represented and welcomed at Pacifica State Beach.

As indicated in the Public Access and Recreation findings above, the proposed surf school program is inconsistent with Coastal Act objectives to assure maximum access and recreational opportunities for all, and specifically imposes additional barriers for non-profits serving underserved communities. What's more, Commission staff discussions with non-profit and commercial user groups illustrated the actual inequities of the proposed program, including as variations of such a program has been implemented without a CDP since 2005, and thus has been experienced in real-time by the user groups, both for-profit and non-profit surf schools. The perception is that the proposed program essentially creates two classes of surf schools, for-profit commercial schools and non-profit schools that cater to underserved communities, and that it gives preference to the former at the expense of the latter. Such preference has historically been borne out by not allowing such non-profits a means to obtain a surf school permit at all for use of the beach and ocean, and is exemplified in the new proposed program by allowing commercial operators three times the number of participants as non-profits, and requiring non-profits to jump through a series of application hoops (including different criteria, and a wholly different review and approval process) that are not required of commercial operators.

Further, there is a concern, borne out at least anecdotally based on incidents reported to Commission staff, that at least some commercial operations feel like they have greater seniority and are allowed 'first-choice' for use of the beach and ocean, including in a manner that intimidates non-profit groups and their participants. This, in effect provides such non-profit participants with perhaps the direct opposite of the experience that the Commission wants such users to have, particularly first time users or those not often afforded the opportunity to access the beach and ocean. That kind of outcome is antithetical to the Coastal Act and the concept of equal access for all and is not a program that the Commission can support. To be clear, the Commission acknowledges that there is a difference between commercial for-profit operations and non-profit operations, where the former is focused on making money by providing recreation opportunities and the latter is focused on bringing beach and ocean experiences to those who may not have such ready opportunities. However, under the Coastal Act, including its environmental justice provisions, prioritization for access to the beach and ocean is actually the opposite of what has been the case under the City's program to date, and is proposed by the City to continue. Namely, it is the Commission's position that it is the non-profits that are seeking to increase beach and ocean awareness, experiences, and stewardship for underserved communities that represent a higher priority than those out for commercial gain, even if such commercial operations seek to achieve some of the same beach and ocean objectives. This position is borne out of the more general Coastal Act premise that the beach and ocean are meant to be available for general public use, for all, and that commercial operations may facilitate such use in certain circumstances, but as a general rule cannot be allowed to significantly, adversely affect general public use.

Thus, evaluation of the proposed program through an environmental justice lens only further reinforces the need to modify the proposed program to achieve Coastal Act consistency as identified in the preceding finding and provides extra support for such a revised program outcome.

3. Other

Although the Commission is providing the CDP to authorize the revised program under the Coastal Act and has done its best to properly condition the project in a Coastal Act sense, it is the City's program, there could be unforeseen issues, and it is the City that must assume all risks associated with that program. See **Special Condition 6**.

In addition, Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), **Special Condition 7** requires the Applicant to reimburse any costs and attorney fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this CDP, the interpretation and/or enforcement of CDP terms and conditions, or any other matter related to this CDP.

4. Violation

As described above, the City has for nearly two decades operated a permitting program as it relates to allowing surf school/organized group operation and access to the beach and offshore surfing area at Pacifica State Beach, but that program has been operated without the benefit of the required CDP for all that time.¹¹ As such, the City does not and did not have CDP authority to operate their surf school program, or any other similar program, on Pacifica State Beach unless and until it is authorized by the Coastal Commission through a CDP, or other appropriate process allowed under the Coastal Act. In addition to previously indicating to the City that a CDP is required for a surf management program at Pacifica State Beach, on April 29, 2022, Commission staff formally asked the City of Pacifica to immediately cease such activities if they were ongoing and stated that absent an approved CDP, access to the beach and ocean is available without any restrictions, to all members of the public.

In any case, Commission review and action on this CDP application does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of any development undertaken on the subject site without a CDP, or that any aspects of the violation have been resolved. Accordingly, the Applicant remains subject to enforcement action for unpermitted development on the subject

¹¹ Note that the program at the least included and includes changes in intensity of use of land (i.e., the beach and supporting areas (e.g., parking lots, restrooms, etc.)), and changes in the intensity of use of water (i.e., the ocean) and access thereto, which qualifies it as development requiring a CDP under the Coastal Act (see Coastal Act Sections 30106 and 30600).

property after CDP action in the same way as before CDP action.

5. California Environmental Quality Act (CEQA)

Section 21080.5(d)(2)(a) of CEQA prohibits a proposed development from being approved if there are any feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the development may have on the environment. The City of Pacifica, acting as lead CEQA agency, determined that the proposed project was categorically exempt from CEQA review pursuant to the no new structure exemption, and thus the City did not identify any significant adverse environmental effects from the proposed project.

The Commission's review, analysis, and decision-making process for CDP applications has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has analyzed the relevant coastal resource issues with the proposal and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. The Commission finds that only as modified and conditioned herein will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. Thus, the proposed project as modified will not result in any significant environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A).

Appendix A – Substantive File Documents

- CDP Application 2-22-0004

Appendix B – Staff Contact with Agencies and Groups

- City of Pacifica Parks, Beaches, and Recreation Department
- California State Parks
- Brown Girl Surf
- City Surf Project
- Adventure Out
- CAPP/Coastal Access Working Group
- Surfrider Foundation