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Appeal Filed:	11/13/2019
Action Deadline:	Waived
Staff:	Susan Craig
Staff Report:	6/30/2023
Hearing Date:	7/12/2023

STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number: A-3-STC-19-0208

Applicant: Cliff Bay Partners LLC

Appellants: Jim Conway and Anita Webb; Save Santa Cruz Westside; Gillian Greensite; Patricia Forrest

Local Government: City of Santa Cruz

Local Decision: City of Santa Cruz CDP application number CP18-0043 approved by the City Council on October 22, 2019.

Project Location: A roughly 2.2-acre parking lot site associated with and just inland of the blufftop Dream Inn hotel and adjacent to residential townhome development and a mobile home park at 190 West Cliff Drive in the City of Santa Cruz in Santa Cruz County.

Project Description: Construct a new four-story, 47-foot-high (with 56-foot-tall elements on the rooftop), mixed-use structure with two levels of underground parking (via almost 65,000 cubic yards of grading) providing 369 spaces; about 17,000 square feet of ground-level commercial space and 52 ground-level parking spaces; about 17,000 square feet of public plaza ("Coastal Paseo"); 89 residential condominium units (including 10 affordable units) via subdivision; 27 residential rooftop decks/patios (including stairways and railings); rooftop photovoltaic panels; street, sidewalk, and intersection improvements; underground utility extensions and connections; removal of 11 heritage trees and planting of 31 trees; and related development.

Staff Recommendation: No Substantial Issue

IMPORTANT HEARING PROCEDURAL NOTE

Please note that this is a substantial issue hearing only, 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, Appellants, persons who opposed the application before the local government, the local government (here the City of Santa Cruz), 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 City's CDP decision stands, and is thus final and effective.

SUMMARY OF STAFF RECOMMENDATION

The City of Santa Cruz City Council approved a CDP for a mixed-use four-story, 47-foot-tall development (with rooftop elements, including stairways and decks/patios, reaching 56 feet) at 190 West Cliff Drive across the street from the Dream Inn and just upcoast from the Santa Cruz Wharf and Beach Boardwalk amusement park. The project includes 10 deed-restricted affordable units that would be owner-occupied for low and very-low-income residents, as well as a contribution of \$500,000 to the City's affordable housing reserve fund. All told, the City's approved project consists of two underground parking levels, ground-level commercial space and parking, a public plaza, and 89 residential condominiums (nine of which are multistory townhomes), 10 of which are the affordable units (eight units for those with very low incomes and two units for those with low incomes), over three upper stories, all at an existing approximately 2.2-acre parking lot associated with and just inland of the Dream Inn hotel and adjacent to townhome, mobile home, and motel/inn development. The appeals contend that the City's approval of the CDP raises questions regarding its consistency with the City's Local Coastal Program (LCP) and Coastal Act public access provisions related to mass, scale, and neighborhood/community compatibility; public views; allowed uses; groundwater, drainage, and landform alteration; traffic and parking (including with respect to public access parking); tree removal; noise; air quality; and CEQA.

The primary issue in this appeal is whether the scale of the development approved by the City is appropriate under the City's LCP. In this case, the proposed development meets most objective LCP standards (for lot area, open space, parking, etc.) except that it includes 23 more residential units than the maximum allowed under the LCP (i.e., 66 units maximum are allowed, and the project includes 89 units), it is at least one-story and up to 20 feet taller than the maximums allowed under the LCP (i.e., 36 feet maximum is allowed, and the project extends to 47 feet in height for most elevations, and up to 56 feet in height at the rooftop patios), it does not include required upper story building setbacks, and includes rooftop decks/patios when the LCP would not allow for such decks/patios. In other words, the project is not consistent with the LCP on these points. In allowing for such LCP inconsistencies, the City relied on the application of state density bonus law, which allows for deviations from such requirements under

certain parameters when affordable housing is provided (and here 10 affordable units would be provided, including 8 units available to those with very low income) where the LCP explicitly allows for numerical limits to be adjusted in such cases. However, state density bonus law does not override the LCP (which is an extension of another state law, namely the Coastal Act), and cannot be implemented in a way that conflicts with the Coastal Act. Thus, ultimately, the primary question in this circumstance is whether the City's action adequately protects coastal resources under the LCP with the exceptions applied. Staff believes it does.

Specifically, although the increase in units, stories, and height, and the setback and roof deck deviations are not insignificant, the larger resultant project should not significantly adversely affect character and public views at this location more than would an LCP-consistent project, particularly given the urban context and the fact that the project would be located inland of the first public road in an area where it is unlikely to affect important immediate shoreline public views. In fact, the Dream Inn (which extends to eight stories and about 80 feet in height as seen from the streetside) would essentially block most views of the project from the immediate shoreline area.

In addition, the project buildings' total square footage is actually less than what would be allowed for an LCP-consistent project because the project includes roughly 30,000 square feet of open space, including a public plaza area (dubbed the Coastal Paseo), and the project's setbacks along the rear and interior side yards (which are adjacent to the mobile home park) are larger over all four stories than those required under the LCP. Because of this, the overall square footage of the project (and the total massing above ground) is less than what could be approved as consistent with the LCP without the exception applied. Thus, in this case, the affordable housing-related deviations applied through state density bonus law provisions (and here the Applicant would also contribute \$500,000 to the City's affordable housing reserve fund) do not lead to significant and inappropriate coastal resource impacts related to mass and scale.

As to other appeal contentions, the site is LUP-designated for regional/visitor/beach commercial uses and allows for residential use in a mixed-use setting, such as this. The project also includes an extension of ancillary Dream Inn uses, as well as plazas and pedestrian spaces, public and commercial parking, and recreational/cultural uses, all of which are also allowed at this site. As to public access, the project includes substantial onsite bicycle parking for both residents and the general visiting public. The project also includes a new roundabout (which will improve traffic congestion at the West Cliff Drive/Bay Street intersection), sidewalk widening, and other pedestrian/biking improvements. And the Coastal Paseo will provide general public visitor-serving access and recreation in an area where none exists now. With respect to tree removal and replanting, the project meets all LCP requirements, including that the project includes nesting surveys prior to tree removal and appropriate protections for nesting birds. In terms of air quality, vehicle emissions associated with the project would be well below health impact thresholds. As to noise, the project includes a sound wall along the project's boundary with the adjacent mobile home park, most parking is subterranean, and the majority of the commercial areas are located along West Cliff Drive (with buildings in between the commercial areas and adjacent residential areas). The project is also conditioned to require that any amplified music in the Coastal Paseo not be

audible to any offsite residential property. In terms of construction noise, the project is conditioned to allow construction only during weekday daylight hours and requires that the adjacent residents be notified of the construction schedule and given contact info to address construction questions or concerns. Regarding groundwater/drainage, there is a perched groundwater layer that will require dewatering during construction, and damp-proofing/waterproofing after construction, but nothing that is not allowed by the LCP. Finally, CEQA contentions are not a valid appeal contention, and even if they were, the above analysis accounts for any substantive resource issues that could be attributed to such concerns.

In short, staff has concluded that the appeal contentions do not raise a substantial issue. While it is true that the project does not meet all LCP requirements, it is also true that it does not appear to lead to any significant coastal resource impacts as a result, and thus can be allowed through an application of state density bonus law to the project. And projects like this that can appropriately protect coastal resources while accommodating both housing and affordable housing in developed areas able to handle it are important to help address acute housing shortages—especially affordable housing shortages—in our coastal communities. Such projects can also help to relieve pressure for housing projects that might be proposed on the periphery of developed areas, or in rural or sensitive habitat areas, where such projects can raise significant coastal resource concerns.

Thus, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP (or Coastal Act access) conformance issue, and that the Commission decline to take jurisdiction over the CDP application for this project. The single motion necessary to implement this recommendation is found on page 6 below.

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EXHIBITS

- Exhibit 1: Project Location and Appeal Boundary Maps
- Exhibit 2: Project Area Photos
- Exhibit 3: City-Approved Project Plans and Renderings
- Exhibit 4: City of Santa Cruz Final CDP Approval
- Exhibit 5: Appeals of City’s CDP Action
- Exhibit 6: Applicable LCP Development Standards
- Exhibit 7: Applicant’s Affordable Housing Contribution Letter dated October 29, 2019

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-19-0208 **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-19-0208 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 policies of the Coastal Act.*

2. FINDINGS AND DECLARATIONS

A. Project Location

The City-approved project is located at 190 West Cliff Drive in the City of Santa Cruz, which is located on the northern portion of the Monterey Bay about 75 miles south of San Francisco. West Cliff Drive is located on the upcoast edge of the City and it hugs the shoreline extending from near the entrance to the Santa Cruz Municipal Wharf all the way to Natural Bridges State Beach upcoast, a distance of about three miles. West Cliff Drive is located atop a roughly 30- to 40-foot-tall bluff that extends mostly vertically down to the ocean with a few popular pocket beaches along its route. For the most part, the West Cliff Drive corridor is located almost immediately adjacent to the blufftop edge and thus it provides an incredible ocean and coastal vista, including because the residential neighborhoods of the City's westside are located inland of it and there are very few structures seaward of the road. A meandering recreational multiuse path extends along the seaward side of the road for its entire length and this path is heavily used by residents and visitors, both in terms of the path itself and for access to the various recreational surf and beach areas along West Cliff Drive. Free public parking is provided in a series of parking bays and lots extending from the street, as well as on-street parallel parking along portions of West Cliff Drive itself and along adjacent neighborhood streets. West Cliff Drive is one of the most significant coastal visitor destinations in the City of Santa Cruz and the northern Monterey Bay.

The project site is an existing approximately 2.2-acre (95,055-square-foot) at-grade parking lot located at the northwest corner of the West Cliff Drive and Bay Street

intersection, on the inland side of West Cliff Drive near its downcoast starting point at the wharf. The parking lot currently provides parking for the Dream Inn hotel, including its restaurant (called the Jack O'Neill Restaurant and Lounge), and it contains 216 marked parking spaces. The parking lot also includes landscape pockets that include 55 trees, 17 of which qualify as heritage trees under the City's LCP. Commercial and residential uses surround the project site – the Clearview Court mobile home park is located to the west and north, two inns (West Cliff Inn and Seaway Inn) are located to the north, the Dream Inn hotel is located on the bluff across West Cliff Drive from the project site and the Sea and Sand Inn just upcoast of that, and multifamily townhomes are located across Bay Street from the project site. The Santa Cruz Municipal Wharf and the Santa Cruz Beach Boardwalk are located approximately 650 feet and a quarter mile from the site, respectively.

The project site is designated Regional/Visitor Commercial (RVC) in the LCP's Land Use Plan (LUP) and Beach Commercial in the LUP's Beach and South of Laurel Comprehensive Area Plan (BSOL Plan). The project site is zoned Motel Residential with a Performance Overlay (R-T(B)/PER) in the LCP's Implementation Plan (IP). These designations generally emphasize visitor-serving commercial uses such as hotels, motels, restaurants, and amusement parks, as well as other visitor and commercial uses such as ancillary Dream Inn uses, plazas and pedestrian spaces, public and commercial parking, and recreational/cultural uses.

The portion of the site located closest to West Cliff Drive is also located within the Coastal Zone Overlay (CZ-O) and Shoreline Protection Overlay (SP-O) districts, meaning that this portion of the site is located in an area where City CDP decisions are appealable to the Coastal Commission.

See **Exhibit 1** for location maps, which includes a map showing the area of the proposed project that is located within the Commission's appellate boundary. See **Exhibit 2** for site photos.

B. Project Description

The City-approved project would allow for construction of a multistory mixed-use project consisting of two levels of underground parking (369 spaces), about 17,000 square feet of ground-level commercial restaurant and retail space, 52 ground-level parking spaces for the general public, and 89 residential condominium units located primarily on floors two through four,¹ with rooftop decks/patios privately accessible to most of the condominiums located on the fourth floor. On the ground floor, the project includes a "Market Hall" area with restaurants and other retail units, and a 16,711-square-foot "Central Coastal Paseo" (Coastal Paseo), which would be an open space with indoor and outdoor seating areas and bicycle racks available to residents, hotel guests, and the general public whenever the commercial uses are in operation. The project also includes landscaping, over 11,000 square feet of additional public space around the ground floor commercial uses (in addition to the Coastal Paseo), outdoor common areas on the second and third floors for the residents (e.g., a pool, barbecue areas,

¹ Although 80 of the condominium units are each located on a single level, the project also includes nine multi-level townhomes along Bay Street, six of which include a ground-level floor.

areas for vegetable gardening, etc.), a subdivision (for the residential condominium units), hotel office space, a valet office, and storage space. The project includes the removal of the majority of the 55 trees on the site, including 11 heritage trees, where the heritage trees would be replaced at almost a 3:1 to ratio (i.e., 31 new trees would be planted).

The project also includes infrastructure improvements such as widening of the sidewalks along West Cliff Drive and Bay Street adjacent to the project site, bike lane and pedestrian crossing improvements, undergrounding of utilities, and the installation of a roundabout at the West Cliff Drive/Bay Street intersection, which would replace the three-way stop sign-controlled intersection that currently exists there.

The approved 89 residential condominium units include 25 one-bedroom, 46 two-bedroom, and 18 three-bedroom for-sale units, with units ranging in size from 651 to 2,706 square feet. Ten of the residential units would be available as affordable housing units, with eight units offered to very-low-income qualifiers (i.e., 50 percent of the area median income) and two units offered to low-income qualifiers (i.e., 80 percent of the area median income) at correspondingly reduced sale prices. The affordable units would include three one-bedroom, five two-bedroom, and two three-bedroom units. Due to the inclusion of these affordable units, and pursuant to state density bonus law, the City's action included approval of a density bonus to exceed the LCP's allowable density (i.e., 66 units maximum are allowed, and the project includes 89 units, an increase of 23 units). The City's action also allowed exceptions to LCP standards with respect to height (i.e., 36 feet maximum is allowed, and the project extends to 47 feet in height for building elevations, and up to 56 feet in height at the rooftop decks, an increase of up to 20 feet), number of stories (i.e., three stories maximum is allowed, and the project includes four stories plus rooftop patio/deck infrastructure above that, an increase of at least one story), setbacks (i.e., increased upper floor setbacks along the street frontages are required by the LCP but were not applied), and rooftop decks and associated infrastructure (which are not allowed under the LCP but are included in this project).

The project also includes 64,766 square feet of open space, including 28,334 square feet of public open space on the ground level (the Coastal Paseo and other ground-level public space), and 29,108 square feet of private residential open space extending through all stories and the rooftop. In addition to balconies, the private open space for the residential units includes two courtyards on the second story at the rear of the site, a deck and a pool on the third story, and rooftop decks/patios above the residential units on the fourth story. Common open space areas for residents (such as garden areas and a beach wash area), totaling 7,324 square feet, would be located on the first and second stories. Total unenclosed residential open space would equal 36,361 square feet.

All told, the gross square footage for the enclosed portions of the multistory mixed-use project structures (not including underground garages or unenclosed residential open space) would total 191,463 square feet (i.e., 119,022 square feet for residential units; 7,215 square feet for residential amenities and lobby; 15,790 square feet for commercial uses (restaurant and retail); 7,841 square feet for storage (residential, hotel, and

bicycle); 9,692 square feet for “back of house” components (including mechanical and pool equipment, trash/recycling facilities, transformers, a valet office, hotel support, toilets, and electrical equipment); and 31,903 square feet for hallway corridors, elevators, stairs, the enclosed ground-level parking lot, and a service dock).

See **Exhibit 3** for the City-approved project plans and renderings.

C. City of Santa Cruz CDP Approval

On October 22, 2019, the Santa Cruz City Council approved a CDP for the project on a 4-3 vote. The notice of the City Council’s final CDP action was received in the Coastal Commission’s Central Coast District office on October 30, 2019 (**Exhibit 4**). The Coastal Commission’s ten-working-day appeal period for this action began on October 31, 2019 and concluded at 5 p.m. on November 14, 2019. Four valid appeals of the City’s CDP decision were received during the appeal period (see below and see **Exhibit 5**).

D. Appeal Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. The City’s CDP action is appealable in this case because the seaward portion of the project site (about half of the site) is located within 300 feet of the inland extent of the beach/bluff (see **page 3 of Exhibit 1**).²

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP and/or to Coastal Act public

² When a project is bisected by the appeal boundary such as this, the Commission evaluates only the development in the appealable area when making its substantial issue determination. Sometimes development within the appeal boundary is clearly separable from development outside the appeal boundary (e.g., a garage wholly within the appeal boundary and a house outside of it). In other cases, though, the appeal boundary simply cuts through portions of the project, as is the case here. In such cases, it can be more difficult to parse what is subject to appeal versus not, especially the programmatic aspects of development that apply to the project overall. In this case, and with respect to the substantial issue determination, the Commission believes that it is not possible to parse out the appeal issues in a manner that clearly distinguishes project components within and outside of the appeal boundary. Instead, the Commission will evaluate the appeal issues through the lens of a complete project, which makes issues raised in the appeal boundary relevant to the entire project. If the Commission finds that the City’s approval raises a substantial issue of conformance with the LCP and takes jurisdiction over the CDP application, then the location of the appeal boundary becomes irrelevant, and the Commission will consider the entire project under the CDP application for LCP and Coastal Act consistency.

access provisions. For appeals of a CDP denial, where allowed (i.e., only allowed in extremely limited circumstances – see description of appealable actions, above), the grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions.

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue with respect to the grounds on which the appeal was filed that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal, addressing at least the substantial issue question, within 49 working days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline. In this case, the Applicant has waived that deadline, and the Commission is thus under no hearing deadlines in this matter.

The Coastal Act and the Commission's implementing regulations are structured such that there is a presumption of a substantial issue when the Commission acts on this question, and the Commission generally considers a number of factors in making that determination.³ At this stage, the Commission may only consider issues brought up by the appeal. In reviewing the substantial issue question, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no such testimony is requested, a substantial issue is automatically found. In both cases, when the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, aggrieved persons, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

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

³ The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no substantial issue..." (see California Code of Regulations, Title 14, Section 13115(b) (CCR)). CCR Section 13115(c) provides, along with past Commission practice, that the Commission may consider the following five factors when determining if a local action raises a substantial issue: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and the Coastal Act's public access provisions; (2) the extent and scope of the development; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal.

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

E. Summary of Appeal Contentions

The appeals contend that the City's approval of the CDP raises questions regarding its consistency with the City's LCP and Coastal Act public access provisions related to mass, scale, and neighborhood/community compatibility; public views; allowed uses; groundwater, drainage, and landform alteration; traffic and parking (including with respect to public access parking); tree removal; noise; air quality; and CEQA.

Specifically, the appeals assert that the approved project would violate applicable LCP provisions because: 1) the mass, scale, and intensity of the project are not compatible with the surrounding built environment and would have an adverse impacts on public views and adjacent low-profile development; 2) the commercial aspects of the project are inconsistent with the allowed uses of the zoning district; 3) excavation for development of the project's underground garages does not minimize cut and fill and may have adverse impacts to groundwater; 4) the project will have adverse impacts to traffic, including with respect to safety, and will also have adverse impacts to street parking that provides public access; 5) the project does not adequately protect heritage trees and removal of such will have impacts on birds and view corridors; 6) the project will lead to noise impacts (due to construction activities and increased traffic) and air quality impacts on an adjacent mobile home park, and; 7) the environmental review process was not adequate and project alternatives were not evaluated because the City granted a CEQA exemption instead of completing an environmental impact report (EIR) for the project. See **Exhibit 5** for the full text of the appeals.

F. Standard of Review

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

G. Substantial Issue Determination

1. Public Views and Neighborhood Compatibility

Applicable LCP Provisions

The project site is zoned R-T(B)/PER and is subject to a series of specific development requirements.⁴ In addition, the following LCP provisions apply to the project in terms of neighborhood compatibility, including with respect to infill development within existing neighborhood or commercial districts, maximizing land intensity or density in areas with adequate services that are unconstrained by hazards, protecting public views, and height limit exceptions:

LUP Community Design Element Policy 1.1: *Infill and intensify land uses consistent with existing neighborhood or commercial district patterns in developed areas currently served by municipal services.*

LUP Community Design Element Policy 1.1.2: *Develop design criteria to ensure compatibility of infill development with existing neighborhoods and proposed development patterns (including intensities and land uses.)*

LUP Land Use Element Policy 2.7.2: *Maximize land intensity or densities in areas unconstrained by resources or hazards and having adequate service capabilities.*

LUP Economic Development Element Policy 5.3: *Provide careful evaluation and require appropriate design of visitor-serving facilities and services to reduce traffic and also ensure protection of neighborhood, important views, and the natural environment.*

IP Section 24.12.150(1)(e), Height Limits Modifications: *1. The height limitations specified in this title shall not apply to the following uses: ... e. Cupolas, scenery lofts, or other roof structures for the housing of elevators, stairways, tanks, ventilating fans, air conditioning, or similar equipment used solely to operate and maintain a building.*

Appeal Contentions

The appeal⁵ contends that the height, mass, scale, intensity, and density of the project are not compatible with the surrounding built environment and would have adverse impacts on public views and adjacent low-profile development, including the adjacent Clearview Court mobile home park. Specifically, the appeal contends that the project's fourth story will lead to privacy and shading impacts on the adjacent mobile home development, that the second to fourth stories of the buildings do not step back but instead step forward outward over the first story, and that the approved rooftop deck/patio improvements do not comply with the LCP's allowable rooftop structure provisions. See **Exhibit 5** for the full appeal contentions.

Analysis

⁴ See **Exhibit 6** for the development standards of the R-T(B)/PER zoning district (IP Sections 24.10.617.1 through 24.10.617.3).

⁵ As indicated above, there are four separate appeals that constitute "the appeal" in this case. These appeals are referred to collectively in this report as "the appeal," unless there is a reason to detail specific aspects of individual appeals.

Density

The maximum allowed residential density for this site pursuant to the LCP is one dwelling unit per every 1,450 square feet of lot area (per the standards of the R-T(B)/PER zoning district) or 30 units per acre (per the BSOL Plan), which are equivalent. Since the site is 2.2 acres, the maximum allowed density under the LCP is 66 units. Because the City-approved project includes 89 residential units, it is inconsistent with the LCP on this point.

As to affordable unit requirements, the LCP does not include any affordable housing requirements because the City's Inclusionary and Density Bonus Ordinances are not a part of the LCP. For context, however, the City's non-LCP sections require that 20% of a project's units be "affordable," and/or for that number of units to be offset by in-lieu mitigation fees (directed to the City's affordable housing fund) sufficient to construct such units elsewhere in the City. Here, the 20% requirement as applied to the LCP maximum of 66 units would mean that at least 14 of those units would need to be affordable; when applied to the 89 units approved by the City, the number of such units that would need to be affordable would be 18 units. The City-approved project in this case includes 10 affordable units⁶ and a contribution of \$500,000 to the City's affordable housing reserve fund (see **Exhibit 7**), which could likely be leveraged to produce an additional roughly five offsite affordable housing units (with the potential for more units depending on the specifics of the project). This is fewer affordable units than would be required under the City's inclusionary ordinance; again, however, such a discrepancy is not an LCP discrepancy and thus cannot be used to make appeal/CDP findings but does provide relevant background information for understanding the City's decision.

Height/Stories

The maximum allowed building height for this site pursuant to the LCP is 36 feet, and the maximum allowed number of stories is three (see first chart in **Exhibit 6**). The City-approved project includes a main building height of 47 feet over four stories of development, with certain project elements associated with the rooftop decks and patios extending up to about 56 feet.⁷ Thus, the City-approved project includes project elements that reach up to 20 feet taller than allowed, and includes at least one more story than allowed, both of which make it inconsistent with the LCP on these points.

Rooftop Decks/Patios

The project's fourth floor would include 30 condominium units, each with a private balcony on that level. In addition, 27 of the fourth-floor units would each have a private

⁶ Where eight units would be offered to very-low-income qualifiers (i.e., includes those households at 50% or less of the area median income) and two units would be offered to low-income qualifiers (i.e., includes those households at 80% or less of the area median income).

⁷ The 27 rooftop decks/patios would be accessed by 27 private stairways and would be equipped with synthetic wood trellises with photovoltaic solar panels, where the trellises and the housing for the staircases would extend about nine feet above the fourth-floor roof to a height of about 56 feet above finished grade. These elements also include massing that could be perceived as an additional story (i.e., a fifth story).

staircase to the rooftop⁸ that would lead to a private rooftop deck/patio area (see **page 8 of Exhibit 3**). The rooftop deck/patio areas would be surrounded with a 42-inch-tall clear glass safety railing system, except that all rooftop railings that face the Clearview Court mobile home park would be made of an opaque material.

The City found that the rooftop elements (i.e., trellises, rooftop stairs, and private rooftop decks/patios) that extend the project's height to about 56 feet are allowed under IP Section 24.12.150(e), which states: "The height limitations specified in this title shall not apply to the following uses: (e) Cupolas, scenery lofts, or other roof structures for the housing of elevators, stairways, tanks, ventilating fans, air conditioning, or similar equipment used solely to operate and maintain a building." The City argues that cupolas and scenery lofts (which are facilities for theaters and not residences and thus inapplicable in this project's context) are not "used solely to operate and maintain a building," and thus this final clause in Section 24.12.250 only applies to "other roof structures" and does not apply to trellises, private rooftop stairs, and private rooftop decks/patios. A clearer way of understanding the exception is to first note it is an exception to height requirements, which by definition is intended to apply to a narrow class of necessary development; here, development necessarily above the rooftop (whether camouflaged (e.g., in a cupola), or not). While the City can point grammatically to its interpretation of this provision, the City's interpretation is problematic. This is because the natural extension of the City's argument would provide that essentially any type of development would be an allowed exception to a zoning district's height standard. In this case, although the two building maintenance stairways that extend above the rooftop are an allowed exception under the LCP, none of the other rooftop improvements (i.e., private stairways, decks/patios, trellises) qualify for height exceptions, making the project inconsistent on this point as well.

Mass and Scale

There is no maximum floor area ratio or other similar mass/scale requirements in the LCP that apply to this site; rather the LCP-allowed maximum mass and scale are a function of the square footage and bulk that can be accommodated within the three-dimensional polygon identified when the LCP's height and setback requirements are applied, and when any other square footage limitations are accounted for. While fairly simple analytically, the LCPs setback requirements that apply at this site are actually

⁸ There would be 29 rooftop staircases. Of these, 27 staircases would provide access to the rooftop for 27 of the fourth-floor condominiums, and two staircases would provide access to the rooftop for maintenance purposes.

quite complicated (see **Exhibit 6**).^{9,10} When calculated, and applied to the 36-foot maximum height limit that establishes the top of polygon, the LCP-consistent three-story polygon would have a total square footage of about 245,000 square feet.¹¹ While the City-approved project includes some incongruities with respect to certain building setbacks,¹² the gross square footage of the approved project's above-ground structural development is 191,463 square feet (not counting the below ground garages or ground level open space areas), so it is actually below the maximum allowed square footage (mostly because the buildings actually have greater setbacks in some locations than the LCP requires,¹³ and a large open Coastal Paseo and other ground-level public space (nearly 30,000 square feet) occupies a substantial area that otherwise could be devoted to buildings – see **page 36 of Exhibit 3**). Put another way, the project's total square footage is shifted into a narrower and taller space. And while the overall square footage is lower than what the LCP would allow, the particular allocation/configuration of that square footage in terms of height and setback is done in a way that leads to the above-described LCP inconsistencies.

LCP Inconsistencies

In short, the proposed development meets LCP standards for allowed square footage, but it includes LCP nonconformities in terms of density (i.e., at 89 total units, it includes 23 more residential units than the LCP maximum of 66), height (it is at least one story and up to 20 feet taller than the maximums allowed under the LCP (i.e., 36 feet maximum is allowed, and the project extends to 47 feet in height for most building elevations, and up to 56 feet in height at the rooftop decks/patios)), setbacks (it does

⁹ For the first floor, required minimum setbacks are 15 feet and 6 feet for the front yard along West Cliff Drive (split evenly), 5 feet on the interior side yard (along part of the Clearview Court mobile home park), 8 feet on the exterior side yard (i.e., Bay Street frontage), and 10 feet for the rear setback (nearest the Clearview Court mobile homes). For the second floor, the same front, rear, and exterior side setbacks apply, but the interior side setback increases to 8 feet. For the third floor, the LCP requires a stepback from the second floor of at least 15 feet for street-facing frontages (in this case, the front and exterior side setbacks along West Cliff Drive and Bay Avenue, respectively). The required third-story setback for both the rear and interior side yard setbacks is 12 feet. See **pages 25 to 29 of Exhibit 3** for project plans depicting the building setbacks.

¹⁰ As mentioned above, IP Section 24.10.617.3(4)(c) (see **Exhibit 6**) states that third-story development shall be stepped back from the two-story development by at least 15 feet, from the property lines at the streets. Such additional setbacks are meant to ensure that third-story development does not loom over the public viewshed as seen from vantage points along street frontages. While some Appellants claim that the project needed to also include this additional third-story setback from the Clearview Court mobile home park (which it does not, as approved by the City), the portions of the project adjacent to the mobile home park are located along the rear and interior side yard property lines and not along a public street, and thus this additional setback is inapplicable in those locations.

¹¹ The LCP also includes requirements that each residential unit provide at least 400 square feet of private open space (which can be in balconies and in residential common open space areas, such as pools and community gardens), and this open space can be reasonably accounted for in the 245,000 square feet.

¹² For example, the upper stories along the West Cliff Drive and Bay Street frontages are not stepped back the required 15 feet from the second story.

¹³ For example, the approved project's front yard setback ranges from about 6 feet to over 100 feet at the Coastal Paseo, the interior side yard setback is 25½ feet for each story, and the rear yard setback is about 32 feet for the first story, and about 28 feet for the second through the fourth stories.

not include the required upper story building setbacks of 15 feet), and in terms of includes rooftop decks/patios when the LCP would not allow for such decks/patios. In other words, the project is not consistent with the LCP on these points.

In allowing for such LCP inconsistencies, the City relied on the application of state density bonus law, which allows for deviations from such requirements under certain parameters when affordable housing is provided (and here 10 affordable units, including 8 units available to those with very low income, are provided) where the LCP explicitly allows for numerical limits to be adjusted in such cases. However, state density bonus law does not override the LCP (which is an extension of another state law, namely the Coastal Act), and cannot be implemented in a way that conflicts with the Coastal Act.

State Density Bonus Law (DBL)

Enacted in 1979, the state Density Bonus Law¹⁴ (DBL) allows a market-rate residential development project to exceed local development standards in exchange for incorporating residential units for specific demographics into the project. DBL grants exceptions for development projects that include affordable residential units for moderate-, lower-, and very-low-income residents; transitional foster youth; disabled veterans; unhoused persons; and college students receiving financial aid.¹⁵ Cities and counties are required to grant a “density bonus,” which is an exceedance of the otherwise allowable project density, if a housing project would include affordable units for one or more of these demographics. The amount of the density bonus is codified as a sliding scale based on the percentage of affordable units provided and the demographics targeted. In general, DBL grants up to a 50% density bonus for residential developments that incorporate between 15% and 44% affordable units, depending on the demographic.¹⁶ DBL also allows for a 100% density bonus for residential developments that are 100% affordable. DBL further specifies that no maximum density standard shall apply to any residential development project that is within one-half mile of a major transit stop or within a “very low vehicle travel area.”¹⁷

In addition to providing a density bonus, DBL requires a city or county to provide up to four “incentives” or “concessions” to any project that qualifies for a density bonus, depending on the percentage of affordable units provided. Incentives/concessions are defined jointly to include changes in setback, square footage, and parking requirements;

¹⁴ Government Code Section 65915 et seq.

¹⁵ DBL also provides a blanket 20% density bonus for senior citizen housing developments and senior citizen mobile home parks, with no affordability requirements.

¹⁶ The percentage of affordable units used to calculate the density bonus is with reference to the originally proposed number of units (the “base density”). For example, if a developer proposes a 100-unit residential project with 90 market-rate units and 10 affordable units for very low income residents, this 10% affordability percentage would warrant a 33% density bonus. The developer would be entitled to 33 additional market-rate units (for a total of 133 units), though this density bonus would dilute the percentage of affordable units to 6%.

¹⁷ Government Code Section 65915(o)(9) defines “very low vehicle travel area” as “an urbanized area, as designated by the United States Census Bureau, where the existing residential development generates vehicle miles traveled per capita that is below 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita.”

approval of mixed-use zoning; and any other proposal that would enhance the financial viability of the project.¹⁸ A developer may also propose to have any development standard waived or reduced in order to accommodate any density or incentive/concession allowed by DBL.¹⁹ Examples of waivable development standards include lot coverage, open space requirements, setbacks, and architectural design standards. There is no limit to the number of development standard waivers that may be requested or granted under DBL.²⁰

Through density bonuses, incentives/concessions, and waivers, DBL provides myriad development standard exceptions which are designed to increase the supply of market-rate housing and, to a lesser extent, affordable housing. When any of these exceptions are requested by a developer, a local government is required to grant it “by right” through a ministerial, administrative process unless the local government can affirmatively demonstrate that the exception would not result in a cost savings to the developer, would cause a public health or safety problem, would harm historical property, or would be contrary to law.²¹ Aside from these limited bases for denial, given that there is no cap on the number of development standard waivers that may be requested or granted, DBL allows for seemingly limitless exceptions to local development standards.

Many local jurisdictions in the coastal zone have already adopted inclusionary housing ordinances separate from DBL. Inclusionary housing ordinances generally require that any new multi-unit residential project include a certain percentage of affordable units, with no density bonus or other development standard exception granted in return. Such requirements frequently range from 15% to 20% and are typically framed in terms of providing such units on-site, contributing a fee to allow for the construction of such units off-site, or some combination thereof. Inclusionary housing ordinances are not insulated from DBL. In 2013, the California Court of Appeal held in *Latinos Unidos del Valle De Napa y Solano v. County of Napa* that a local jurisdiction cannot disregard affordable units that are included in a project pursuant to a jurisdiction’s inclusionary housing ordinance when determining whether a project included enough affordable units to qualify for a density bonus.²² The Legislature subsequently codified this holding in

¹⁸ Government Code Section 65915(k).

¹⁹ Government Code Section 65915(k).

²⁰ DBL over the years has morphed from allowing up to three concessions and/or incentives to a project (e.g., allowing an additional 10 feet of height above the otherwise required maximum to accommodate the project), to now allowing four, and to also allowing any number of waivers (i.e., exceptions) to local requirements to accommodate those four concessions/incentives. As a result, as currently drafted, DBL essentially allows for unlimited deviations to local requirements.

²¹ The bases upon which a local government can reject a requested incentive/concession or waiver previously included finding that such an exception would have an adverse impact on the environment. However, this basis was removed by Senate Bill 290 (Skinner, Ch. 340, Stats. 2021).

²² See *Latinos Unidos del Valle De Napa y Solano v. County of Napa* ((2013) 217 Cal.App.4th 1160). The Court of Appeal held that DBL does not allow a city or county to use its inclusionary housing ordinance to increase the minimum number of affordable units required to qualify a housing project for a density bonus and other DBL exceptions. In doing so, the court invalidated a section of the Napa County density bonus ordinance that stated, “These density bonus units will be provided, at the request of the applicant, when that applicant provides target units in addition to the affordable units required by [the Napa County 20%

2020.²³ Thus, in jurisdictions where an inclusionary housing ordinance has stronger requirements than DBL, a developer is not required propose any additional affordable units in order to receive the multitude of exceptions afforded by DBL; the exceptions accrue in the course of complying with the inclusionary housing ordinance.

The policies of the Coastal Act (and LCPs certified pursuant to the Coastal Act) establish development standards intended to protect coastal resources. Where DBL allows development projects to exceed these development standards, the Coastal Act and DBL conflict with one another, potentially significantly. DBL reinforces this conflict by stating that the granting of a density bonus or an incentive/concession does not require amending the applicable LCP or issuing any discretionary approval (such as a CDP).²⁴ Government Code Section 65915(m) seeks to avoid these conflicts and harmonize the Coastal Act and Density Bonus Law through inclusion of a Coastal Act “savings clause.”²⁵ It reads:

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

In short, Government Code Section 65915(m) establishes that the DBL does not override the Coastal Act or applicable LCPs that implement it. The Commission has made a concerted effort to partner with local governments in implementing DBL in harmony with the policies of the Coastal Act and LCPs. The Commission has approved numerous DBL-related LCP amendments, including more recent amendments that identify specific methodologies for harmonizing DBL and the Coastal Act.²⁶ Such

inclusionary ordinance]” (emphasis added). The court reasoned that “...allowing the County to increase the number of affordable units required for a density bonus would conflict with subdivision (f) of section 65915, which bases the amount of density bonus on the percentage of affordable housing units in the project.” In other words, jurisdictions are prohibited from applying their own inclusionary housing ordinance to first establish a “base” affordable housing requirement to which the DBL affordability requirement is then added.

²³ Assembly Bill 2345 (Gonzalez, Ch. 197, Stats. 2020) added Government Code Section 65915(o)(6), defining “total units” as including units designated to satisfy a local governments inclusionary zoning requirement. This language is currently located in Section 65915(o)(8).

²⁴ Government Code Sections 65915 (f)(5) and (j)(1).

²⁵ Government Code Section 65915(m) was added to DBL by Assembly Bill 1866 (Wright, Ch. 1062, Stats. 2002). This bill also prescribed the bases on which a local government could deny a requested concession or incentive, including that it would have an adverse impact on the environment.

²⁶ See, for example, San Luis Obispo County LCP Amendment No. LCP-3-SLO-21-0025-1-Part D, which was approved by the Commission in July 2021. This LCP amendment identified an explicit process for evaluating and approving DBL projects under the LCP. The process includes a clear analytical method for comparing an LCP-consistent project for a particular site against a project at the same site incorporating DBL exceptions, thus allowing decision makers (including the Commission, if on appeal) to weigh the relative affordable housing and other benefits of a DBL project against potential coastal resource impacts,

methodologies provide greater regulatory certainty regarding the co-application of DBL and the Coastal Act within a local jurisdiction.

In the City of Santa Cruz's case, the LCP includes a similar provision. Specifically, LCP Section 24.16.262 states:

1. State density bonus law provides that it shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976.

2. For development within the coastal zone, the requested density bonus and any requested incentive, concession, waiver, modification, modified parking standard, or commercial development bonus shall be consistent with State Density Bonus criteria. All applicable requirements of the certified Santa Cruz local coastal program shall be met (including but not limited to sensitive habitat, agriculture, public viewshed, public recreational access, and open space) with the exception of the numeric standards changed through State Density Bonus provisions.

Thus, the LCP provides a specific means of applying state density bonus law in the City's coastal zone, where certain types of projects that provide qualifying amounts of affordable housing can avail themselves of exceptions to LCP numeric standards (e.g., maximum allowed height, minimum setbacks, etc.) but only where all other applicable LCP requirements are met. In short, both the LCP and state density bonus law essentially provide for the same thing, namely allowing for some lessening of LCP numeric standards if (a) it would be consistent the state density bonus law; and (b) it would be consistent with Coastal Act/LCP coastal resource protection. And in this project and based on the Applicant's proposed inclusion of 10 affordable housing units (eight for those with very low income), the project was deemed eligible by the City for a 35% density bonus pursuant to state density bonus law, or up to 23 additional units, for a total of 89 units.²⁷

Coastal Act (LCP)/State Density Bonus Law Analysis

In analyzing this question, the standard presumption is that the numerical standards in the LCP establish the presumed "floor" for protecting coastal resources, anything

and allowing approval if the approving authority concludes "based on substantial evidence, that: (a) the approved project encourages housing opportunities for persons of low and moderate income with the least amount of Coastal Act and LCP deviation; and (b) there will be no significant adverse coastal resource impacts due to the approved project."

²⁷ Again, it is noted that 10 units out of 89 being affordable makes the project 11% affordable, which is less than the City's standard (albeit non-LCP) inclusionary housing requirement of 20%, which would have required 18 affordable units for an 89-unit project without the application of density bonus law. In other words, DBL as applied to a project like this actually results in less affordable units (albeit some are more affordable to the lowest income levels) being provided than if the City's inclusionary housing requirements were applied alone (where this is a known issue with state density bonus law projects, and it is hoped that future amendments to that law can help address these kinds of issues). Again, however, as described above, this is the current legal jurisprudence on the issue given the *Latinos Unidos* case and Government Code Section 65915(o)(8).

beyond which would negatively impact coastal resources.²⁸ Thus, the burden is on the Applicant to show how exceptions to such standards do not impact coastal resources. In some cases, such impacts can be reasonably measured and concluded on; for example, a geological hazard setback supported by a geologic study, or a riparian setback supported by a biological assessment. In such cases, it can be fairly straightforward for the Commission to determine whether a deviation from the established standards would or would not negatively impact coastal resources.

However, in other cases, the relative impacts from exceptions to LCP standards might be more subjective, such as when they may result in visual and/or aesthetic impacts. In some cases, it might be clear that exceeding a certain building height will completely cut off an important coastal view, and thus the deviation should not be permitted. However, in other such cases, such as this project, it is more of a subjective decision as to whether application of the exceptions would impermissibly impact certain coastal resources. In that evaluation, it is also appropriate to consider the public benefits provided by a project as a result of the LCP exceptions (e.g., more affordable units, greater visitor-serving amenities, etc.) when balancing against the potential coastal resource impacts from such exceptions.

Thus, ultimately, the primary question in this circumstance is whether the City's action adequately protects coastal resources under the LCP with the exceptions applied. And at this location on an inland parcel in a transition area between beach commercial development and westside residential development, that question primarily regards how well the project fits in with the surrounding neighborhood and surrounding hotel development, and how well it protects public views. In terms of public views, while reasonable people can – and often do – disagree about the effect of a project such as this on such views, here the project would be located on an inland parcel in an urbanized area of the City adjacent to an eight-story 80-foot tall (above the street) hotel and 48-foot tall townhomes (see photos in **Exhibit 2**) where its effect on the public view corridor, which the site is a part of, would not be unsubstantial, but it would not appear out of place. And while some inland views of the inland Santa Cruz Mountains would be partially blocked as seen from West Cliff Drive due to the project, such views would also be partially blocked by an LCP consistent project, and the public view impact is not significant in this case.

Regarding neighborhood compatibility, especially regarding the adjacent mobile home park, the project may be taller than allowed by the LCP, but it is also more compact and with generally larger setbacks than those required by the LCP. Either way, though, it raises some concerns as to its compatibility, especially in terms of shading, privacy, and scale/scope differences. In terms of potential shading impacts, the project's shadow study (see pages 33 to 35 of **Exhibit 3**) showed that there would be some limited

²⁸ This is because applicable LCP provisions, including numerical standards, that have been certified by the Commission, allow for the kinds, intensities, and densities of development that can likely be accommodated while still protecting coastal resources. In other words, it can be presumed that the starting place for protecting coastal resources are these LCP requirements, which may need to be adjusted to further circumscribe development to protect coastal resources adequately (e.g., where the maximum allowed height for a particular site is 35 feet, but the structure needs to be reduced to 25 feet to protect a public view).

additional shading at the mobile home park within the first two rows of mobile homes, but for limited periods of time, affecting relatively few of the 68 mobile homes present at Clearview Court.²⁹ While not evaluated by the study, it seems clear that a three-story 36-foot-tall LCP-consistent structure would also have shading impacts on the mobile homes closest to the rear and interior property lines of the project site, especially if the setbacks there were the minimum required under the LCP, which is a more apt comparison than existing conditions.

As to whether the project's height will overwhelm the surrounding neighborhood, the project's height will be similar to the existing townhome complex located across Bay Street, which reaches up to 48 feet in height, but would fall well below the height of the eight-story and about 80-foot tall (as seen from West Cliff Drive) Dream Inn hotel, which is located directly across West Cliff Drive from the project site (see photos in **Exhibit 2**). At the same time, it would be taller than the mobile home park structures by a significant amount, which raises both compatibility and privacy concerns. That said, both a three-story and 36-foot-tall LCP-consistent structure and the taller project approved by the City would raise similar concerns as both are at least two stories taller than the adjacent mobile homes, and the upper floors will by definition look over such homes. In other words, the LCP already allows and tolerates a certain amount of such incompatibility, and the degree to which the exceptions provided by the City to allow larger structures increases such impacts does not appear to be significant in that regard. And the City applies a series of requirements to help limit such potential impacts (including larger setbacks than required by the LCP in some locations, the planting of tall shrubs along an eight-foot-tall sound wall that will be installed between the project and the adjacent mobile home park, and a requirement that deck/balcony railings on the side of the buildings facing the mobile home park be made of an opaque material).

Conclusion

The Commission recognizes that, as part of addressing California's housing shortage, it can be incumbent on communities in certain cases to make measured increases in density and height, along with modifications to other development standards, in order to provide more housing, and especially more affordable housing, in a manner that does not raise significant coastal resource issues. Although the project on its face is inconsistent with a variety of LCP requirements, leading to a taller and more residentially dense project than would otherwise be allowed by the LCP, these LCP deviations should not lead to significant coastal resource impacts. In other words, in applying the Coastal Act's, and by extension the LCP's, savings clause as it applies to state density bonus law, the Commission does not believe that additional modifications are necessary to avoid any significant coastal resource impacts, and that the City's

²⁹ The study evaluated shadow patterns at the site and on portions of the adjacent mobile home park during spring, summer, and winter at two-hour intervals starting at 8 a.m. and ending at 4 p.m. In the spring and summer at 8 a.m., the study shows a bit more shade on the first row of mobile homes located adjacent to the project site's rear property line compared to existing conditions, but shows this shading resolving by 10 a.m. In winter, the study shows that most of the first two rows of mobile homes along the rear property line are in a bit more shade at 8 a.m. and at 10 a.m. compared to existing conditions, but this resolves by noon. Also in winter, the study shows that some of the mobile homes along the project site's interior property line will have additional shading in the morning hours and between 2 p.m. and 4 p.m. compared to existing conditions.

approval of a CDP for the proposed project does not raise a substantial LCP conformance issue of with respect to public views and community character.

2. Allowable Uses

Applicable LCP Provisions

The project site is designated RVC (Regional/Visitor Commercial) in the LCP's LUP, and is located within the "Beach Commercial" area of the LUP's Beach and South of Laurel Comprehensive Area Plan (BSOL Plan). The RVC designation for the beach area of the City "emphasizes the development of visitor-serving uses such as hotels, motels, restaurants, amusements and also allows for the development of mixed-use and residential areas." The project site is also zoned R-T(B)/PER (Motel Residential Performance Overlay) in the LCP's IP. The goal of the R-T(B)/PER District is to limit the future development of hotel or motel rooms in the district, but to allow ancillary hotel support facilities as well as additional residential development. The zoning district regulations provide for the allowable uses on the site, which also include all allowable uses in the base R-T(B) zoning district, except for new hotel or motel rooms. See **Exhibit 6** for the standards of the R-T(B)/PER and R-T(B) zoning districts (IP Sections 24.10.617.1 through 24.10.617.3 and IP Sections 24.10.610 through 24.10.616).

Appeal Contentions

The appeal contends that the project's approved commercial uses are not allowed in the R-T(B)/PER zoning district because they do not constitute "ancillary hotel support facilities." One Appellant also contends that the project's commercial visitor-serving uses are not necessary because similar uses are already present at the Dream Inn hotel and other nearby locations.³⁰ See **Exhibit 5** for the Appellants' contentions.

Analysis

In addition to the primary residential component, the City-approved project includes a variety of commercial uses, including a spa, fitness gym, café, retail market, and restaurant market hall (similar to a food court). Other non-residential uses include hotel administrative offices and storage, and 52 parking spaces for general public use. The project also includes the Coastal Paseo, which would be a public open space that also provides for outdoor dining, and which would be expansive enough to allow for additional outdoor activities geared to visitors (e.g., public movie events, cook-outs, artist fairs, small-maker markets, pop-up events, etc.).

To the allowable use question, it is important to note that the site is designated in the LUP as Regional/Visitor Commercial, and by the LUP's BSOL Plan as Beach Commercial. These designations explicitly direct that these areas accommodate "regional/visitor commercial development" and "various commercial uses" that "emphasize the development of visitor-serving uses such as hotels, motels, restaurants" and the like.³¹ The LUP also includes applicable provisions about the uses that are expected, including directing that underutilized land, such as the parking lot site in

³⁰ There are no LCP provisions that would not allow the project on such a basis and, thus, this contention is not further analyzed.

³¹ See the LUP's Commercial Land Use Designations section (LUP page 56).

question, provide for “retail, entertainment, lodging and support uses” (LUP Policy 2.6), and that housing be increased via “combining residential development with commercial development in the regional/visitor commercial areas” (LUP Policy 2.7.2). In other words, the LUP, which defines allowed types, intensities, and densities of use for the LCP, clearly allows for the range of visitor-serving commercial uses associated with the approved project. The appeals base their claims of use-inconsistency on the IP, but the IP does not somehow take precedence over the LUP, particularly if there are questions of LCP interpretation.³²

In addition, the IP allows for uses that constitute “ancillary hotel support facilities.” The LCP does not define such facilities, but as a general rule these types of facilities would be considered affiliated with the hotel in some way by providing supportive and additional functions. In that sense, the approved project can also be considered a type of expansion of Dream Inn offerings, located on Dream Inn property, where not only would hotel offices and storage space be created, but a whole slew of offerings associated with the hotel would be provided (including the spa that would be available to hotel guests,³³ and the restaurants and retail shops). In other words, these uses can clearly be considered to be ancillary hotel support uses because they provide additional options for Dream Inn hotel guests over existing Dream Inn offerings, while also providing access to the project’s residents and the general public. The fact that these visitor-serving uses will also be available to the general public does not mean that they are inconsistent with the R-T(B)/PER zoning district’s requirements regarding ancillary hotel support uses.

Furthermore, the site’s development standards in IP Section 24.10.617.3(4)(a) (see page 2 of **Exhibit 6**) state that “Development shall be designed to create **plazas** and **pedestrian spaces** featuring amenities such as shade, benches, **outdoor dining**, fountains, gardens, and **performance spaces**” (emphasis added). Clearly such standards contemplate benefits not just for Dream Inn hotel guests and the project’s residents, but also uses of a commercial nature that would also be available to the general public (especially with respect to plazas (e.g., the Coastal Paseo), pedestrian spaces (which are located throughout the commercial and Coastal Paseo components of the project), outdoor dining (including the Market Hall), and performance spaces (which could accommodate events such as outdoor movies and commercial “pop-up” events)).

Finally, per IP Section 24.10.617.2 (see page 1 of **Exhibit 6**), all allowable uses of the base R-T(B) zoning district are allowed on the site, except for new hotel or motel rooms. The purpose of the R-T(B) district includes ensuring “a compatible mixture of uses addressing the needs of residents and tourists...” and “development which is attractive to both permanent residents and tourists...” (see IP Section 24.10.610 on page 3 of **Exhibit 6**). The project’s commercial components will serve the project’s residents,

³² And taken a step further, the LCP must be understood in terms of the Coastal Act (see, for example, the *McAllister* case). The Coastal Act prioritizes visitor-serving uses, including visitor-serving commercial uses and development. An LCP that would disallow visitor-serving uses on a site that is designated regional visitor commercial would not be supported by the Coastal Act.

³³ As well as available to the project’s residents and the general public (for a fee).

Dream Inn patrons, and visitors, including other City and County residents as well as visitors who are not staying at the Dream Inn. The R-T(B) district also allows for “public and private commercial parking” and “public and quasi-public buildings and uses of an administrative, recreational, religious, cultural or public utility or service nature; but not including corporation yards, storage or repair yards, and warehouses” (see IP Sections 24.10.612.2(e) and (g) on page 3 of **Exhibit 6**). The project will provide ground-level parking for the general public, which is an allowed use in the R-T(B) district and is thus also an allowed use on the project site. Also, the City-approved commercial uses on the site are all available to the public and some can be considered to be and/or to support recreational use (e.g., the Coastal Paseo, public vehicle/bicycle parking), and some appear to extend to cultural uses as well (pop-events, artist fairs, etc.), which are allowed uses in the R-T(B) district and are thus allowed uses on the project site.

In short, the project appears to be consistent with the LCP in terms of allowable uses, and thus the City’s approval of a CDP for the proposed project does not raise a substantial LCP conformance issue in this respect.

3. Tree Removal

Applicable LCP Provisions

The City of Santa Cruz LUP protects natural features, including heritage trees (defined to include trees fourteen inches in diameter or more, and/or trees that are historically or horticulturally significant) that provide scenic and habitat values, but the LCP does not prohibit tree removal. Rather, the LCP’s tree provisions are structured around evaluation and, where removal is allowed, replanting (including at a minimum of 2:1 for heritage trees). Relevant LCP provisions include:

LUP Community Design Element Policy 2.1: *Preserve natural features providing visual definition to an area within the city.*

LUP Community Design Element Policy 2.2.2: *Identify important vistas and view corridors of community wide value to be preserved and require development to provide visual and physical breaks to allow access to these areas.*

LUP Community Design Element Policy 6.1: *Protect existing and significant vegetation and landscaping that provides scenic as well as wildlife habitat and forage values.*

LUP Community Design Element Policy 6.1.1: *Protect Heritage Trees and Shrubs by reviewing all construction plans to determine their impacts on Heritage Trees or Shrubs and providing technical information to assist owners in maintaining Heritage Trees and Shrubs on private property.*

LUP Community Design Element Policy 6.1.2: *Require a two-for-one or more replacement planting and maintenance program when tree removal is necessary for new development.*

IP Section 9.56.040 - Heritage Tree and Heritage Shrub Designation: *Any tree, grove of trees, shrub or group of shrubs, growing on public or private*

property within the city limits of the city of Santa Cruz which meet(s) the following criteria shall have the "heritage" designation: (a) Any tree which has a trunk with a circumference of forty-four inches (approximately fourteen inches in diameter or more), measured at fifty-four inches above existing grade; (b) Any tree, grove of trees, shrub or group of shrubs which have historical significance, including but not limited to those which were/are: (1) Planted as a commemorative; (2) Planted during a particularly significant historical era; or (3) Marking the spot of an historical event. (c) Any tree, grove of trees, shrub or group of shrubs which have horticultural significance, including but not limited to those which are: (1) Unusually beautiful or distinctive; (2) Old (determined by comparing the age of the tree or shrub in question with other trees or shrubs of its species within the city); (3) Distinctive specimen in size or structure for its species (determined by comparing the tree or shrub to average trees and shrubs of its species within the city); (4) A rare or unusual species for the Santa Cruz area (to be determined by the number of similar trees of the same species within the city); (5) Providing a valuable habitat; or (6) Identified by the city council as having significant arboricultural value to the citizens of the city.

IP Section 9.56.060 - Permits Required for Work Significantly Affecting Heritage Trees and/or Heritage Shrubs: (a) No person shall prune, trim, cut off, or perform any work, on a single occasion or cumulatively, over a three-year period, affecting twenty-five percent or more of the crown of any heritage tree or heritage shrub without first obtaining a permit pursuant to this section. No person shall root prune, relocate or remove any heritage tree or heritage shrub without first obtaining a permit pursuant to this section. (b) All persons, utilities and any department or agency located in the city of Santa Cruz shall submit a permit application, together with the appropriate fee as set forth by city council resolution, to the department prior to performing any work requiring a permit as set forth in subsection (a) of this section. The permit application shall include the number, species, size, and location of each subject heritage tree or heritage shrub and shall clearly describe the scope of work being proposed and the reason for the requested action. Any supplemental reports which may be submitted by the applicant and staff are advisory only and shall not be deemed conclusive or binding on the director's findings. (c) An authorized representative of the department shall inspect the tree or shrub which is the subject of the application. Pursuant to that inspection, the authorized representative shall file with the director written findings. (d) If, upon said inspection, it is determined that the tree or shrub which is the subject of the permit application meets none of the criteria set forth in Section 9.56.040, no further action on the part of the director or the permit applicant is necessary. (e) If the tree or shrub which is the subject of the permit application meets any of the criteria set forth in Section 9.56.040 based upon a review of the permit application and the inspection report, then the director shall make findings of fact upon which he/she shall grant the permit, conditionally grant the permit specifying mitigation requirements, deny the permit or allow a portion of the proposed work outlined in the permit application to be done. (f) Where three or more heritage trees or three or more heritage shrubs are the subject of any proposed work to be performed, the director shall require that the applicant sign an agreement for preparation and submission of a consulting

arborist report. As part of said agreement, the applicant shall be required to deposit with the department an amount of money equal to the estimated cost of preparing the report, as contained in said agreement...

IP Section 9.56.100(a) - Mitigation Requirements for Approved Removals of Heritage Trees or Heritage Shrubs: (a) *Any person who has obtained an approved conditional tree removal permit shall be required to mitigate said removal pursuant to the approved heritage tree and heritage shrub removal mitigation requirement chart adopted by city council resolution. Prior to commencing any work on a heritage tree(s) or heritage shrub(s) pursuant to an approved conditional tree removal permit, the applicant shall deposit with the city in cash or bond all funds required pursuant to the approved heritage tree and heritage shrub removal mitigation requirement chart.*³⁴

Appeal Contentions

The appeals contend that the City-approved project does not adequately protect heritage trees and the scenic resources and wildlife habitat that such trees provide, as required by the LCP. The appeals further contend that construction activities will damage the heritage trees that will be retained on the site, that removal of the 11 heritage trees approved by the City will adversely affect scenic views in the area, and that the project design could be modified to protect and preserve all the heritage trees on the site. One appeal contends that the trees approved for removal could be relocated. See **Exhibit 5** for the full appeal documents.

Analysis

A total of 55 trees are located on the project site, 17 of which are defined as heritage trees (due to being larger than 14 inches in diameter, and not because they were deemed historically or horticulturally significant). The project includes removal of 49 trees (including 11 heritage trees), the majority of which the project arborist's report found to be in fair to poor health; retention of 5 heritage trees in place; and relocation of one heritage tree onsite (see pages 18 to 21 of **Exhibit 3**)^{35,36} The proposed project

³⁴ The mitigation requirement chart was adopted by the City Council but has not been submitted to the Commission for certification and thus is not part of the City's LCP.

³⁵ Trees to be retained would be a deodar cedar (*Cedrus deodara*), a Canary Island pine (*Pinus canariensis*), and two coast redwoods (*Sequoia sempervirens*) along Bay Street, and one Canary Island date palm (*Phoenix canariensis*) located along West Cliff Drive. One Mexican fan palm (*Washingtonia robusta*) would be relocated from near the corner of West Cliff Drive and Bay Street to the central courtyard on the site.

³⁶ In early March 2023, after a series of severe rainstorms along the Central Coast, the Canary Island pine identified to be retained along Bay Street began to lean, and several branches of the adjacent redwood tree were damaged when the pine leaned into the redwood. The City's arborist determined that because the soil was saturated and more heavy rains were anticipated, the Canary Island pine was predisposed to fall and potentially cause further damage to adjacent trees and to public infrastructure. Thus, the City arborist determined that this tree should be removed for public safety, and the tree was removed on March 9, 2023. Additionally, strong winds had broken the entire top of the cedar tree that was identified to be retained along Bay Street, and the City arborist authorized removal of the damaged portions of the cedar tree, with the remaining portions of that tree retained. Given the removal of the pine

includes the planting of 31 new trees onsite, 11 of which are native to California with the remainder being exotic species (none of which, however, are on the California Invasive Plant Council list).³⁷ Because only the 11 heritage trees require replacement at least a 2:1 ratio, the project thus meets the LCP's minimum tree replacement requirements, and thus the main LCP question as it relates to tree removal is more subjective, and namely to what degree such tree removal will affect views and area character.

The existing heritage trees that extend along the project site's Bay Street frontage currently provide some visual definition for this portion of the Bay Street corridor, and some respite from the paved parking lot on the site. Since the project will retain three of these trees, those trees would continue to provide similar functions, albeit in relation to the new buildings and open spaces that would take the place of the parking lot. The project includes the planting of nine new Brisbane box trees along this stretch,³⁸ six of which would be interspersed among the retained heritage trees and three of which would be located on Bay Street close to the West Cliff Drive intersection in an area where no heritage trees currently exist. Over time, the new trees would be expected to grow and provide a fairly lush visual landscape along the Bay Street corridor, which, when combined with the heritage trees that will be retained along Bay Street, will appropriately help to both screen the new buildings as well as help to continue to provide a tree lined aesthetic.

In addition to the nine new trees that will be planted along Bay Street, the approved project includes the planting of 17 new trees in the Paseo and five new golden rain trees along the project site's West Cliff Drive frontage,³⁹ for a total of 31 new trees. And these trees, too, would be expected to provide similar visual offsets. In short, the LCP's direction to provide physical and visual definition and separation appears to be met with the City-approved project. Again, granted the parking lot will be replaced by buildings and developed open space, but the trees to be retained and the new trees to be planted would appear to be sufficient to protect the visual corridor in a similar way that the existing tree formation does so for the parking lot.

As to contentions that construction of the approved project would damage the roots of the retained heritage trees (due to excavation) and their tree canopies (some of which will be pruned to allow for construction), the project arborist's report includes a "Tree Protection Plan" that includes a series of recommendations to protect the heritage trees that will be retained on the site, during construction, which have been required in the

tree along Bay Street, there are now four existing heritage trees that would remain onsite in their current location, and one heritage tree that would be relocated onsite.

³⁷ The trees to be planted are: three 24-inch-box European fan palms (*Chamaerops humilis*); three 24-inch-box cabbage trees (*Cordyline australis*); five 36-inch-box golden rain trees (*Koelreuteria paniculate*); nine 36-inch-box Brisbane box trees (*Lophostemon confertus*); and eleven 24-inch-box native California fan palms (*Washingtonia filifera*).

³⁸ The Brisbane box tree is a drought-tolerant and moderate-to-fast growing upright evergreen tree that typically grows 30 to 40 feet tall and 15 to 25 feet wide in cultivation.

³⁹ The new golden rain trees have a medium-to-fast growth rate, are tolerant of drought, heat, and wind, and will grow 30 to 40 feet tall high and equally as wide, and thus would be expected to provide a fairly lush visual landscape along West Cliff Drive.

City's approval. Such requirements include: 1) specific protection of the tree's critical root zones; 2) tree protection fencing and associated signage criteria; 3) trunk wrap protection for the two palm trees⁴⁰ that will be retained (one of which will be relocated onsite); 4) tree pruning criteria in the event such is needed during construction; 5) demolition of retaining wall infrastructure or paving or sidewalk work within the driplines of the trees along Bay Street to be done under the supervision and in the presence of the project arborist, and any heavy equipment involved in such demolition may not be driven over the bare soil inside the trees' driplines, and; 6) temporary irrigation to the retained heritage trees during the entire construction process. Other required protections include mulching, root protection, root buffers, and a transplant plan for the Mexican fan palm to be developed by the project arborist. In short, the project meets LCP tests for such tree protection.

In addition, the appeals contend that the project's tree removal would have a negative impact on local wildlife, specifically bird species. However, the project is conditioned to limit tree and vegetation removal to between September 1st and January 31st of any given year to avoid bird nesting season. If that schedule is not practical, then a qualified biologist would conduct pre-construction nesting bird surveys prior to vegetation removal. If any active nest is observed, a 200-foot buffer zone for raptor species and a 50-foot buffer zone for all other bird species must be implemented until all nestlings have fledged and are able to feed on their own. These protections adequately address LCP requirements pertaining thereto.

Finally, one Appellant contends that transplant and relocation of the heritage trees to another site should be considered. The project arborist's report states that in most cases, tree specimens with a diameter of 25 inches or greater typically live only a short time following transplant. However, while the LCP does not have any requirements regarding tree transplantation and relocation, the City conditioned its approval to require evidence that the Applicant has consulted with a tree moving expert to determine the feasibility of relocating the trees, as long as relocating the trees does not affect the feasibility of the project.

In conclusion, the City-approved project appears to be consistent with LCP's tree protection and removal requirements, and thus the City's approval of a CDP for the proposed project does not raise a substantial LCP conformance issue in this respect.

4. Public Access

Applicable LCP Provisions

The Coastal Act grants a high priority to public recreational access uses and activities to and along the coast. The Act protects and encourages lower-cost visitor and recreational facilities where feasible and states a preference for developments providing public recreational opportunities. In addition, the Coastal Act requires that oceanfront

⁴⁰ This is necessary because, unlike other trees, palms have no defense to fight trunk wounds, with such wounds becoming decayed over time.

land and upland areas suitable for recreational use be protected for recreational uses. 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 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 30222: *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

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

Section 30210 of the Coastal Act requires the Commission to provide the general public maximum access and recreational opportunities, while respecting the rights of private property owners. Section 30212.5 requires that parking facilities be distributed throughout an area to prevent overcrowding or overuse of the public of any single area. Sections 30213, 30222, and 30223 prioritize visitor-serving and recreational uses over other types of development. Importantly, 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 like provisions in this respect: 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.

Similarly, the LCP also includes policies designed to protect, maintain, and improve a multitude of public access and recreational opportunities along the City of Santa Cruz shoreline, including the public access path along West Cliff Drive. The LUP requires the protection of coastal recreation areas in part by ensuring that development does not interfere with the public's right to access the ocean. Regarding public access parking, the LUP requires that parking areas be distributed throughout the coastal recreation area to mitigate the impacts of overcrowding or overuse by the public of any single area. LUP policies found in the Beach and South of Laurel Area Plan also call for the

improvement of pedestrian and bicycle facilities. And the IP describes the specific parking requirements for residential, commercial retail, restaurant, hotel, and business office uses, and also requires the provision of bicycle parking spaces in new development. Specifically, the LCP states:

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

Land Use Element Policy 3.5.4: *Wherever feasible and appropriate, distribute public facilities (including parking areas) throughout the coastal recreation area to mitigate the impacts of overcrowding or overuse by the public of any single area.*

Beach and South of Laurel Plan Community Design Policy 1.13: *Balance the needs of automobiles, pedestrians, and bicyclists with wide sidewalks for promenading and pedestrian-oriented activities; narrow roadways to slow traffic; continuous bicycle routes; ample, accessible at-grade pedestrian crossing or ramps with appropriately textured surfaces; and curbside parking, bike lanes or landscaped parkways to separate pedestrians and moving cars.*

Beach and South of Laurel Plan Community Design Policy 1.13: *Provide public amenities such as benches, planters, lighting, street name and traffic signposts, trash receptacles, public restrooms, bicycle racks, public telephones and information kiosks that are functionally and aesthetically integrated into the streetscape for pedestrian comfort, convenience, and safety.*

Beach and South of Laurel Plan Circulation Policy 3.8: *Develop the most appropriate combination of circulation improvements, transit/rail, parking, pricing and pedestrian/bicycle strategies which will: support new development and expand the operational season; protect existing neighborhoods; and encourage transit, rail, pedestrian and bicycle access.*

Beach and South of Laurel Plan Circulation Policy 3.10: *Develop and promote pedestrian travel as a viable transportation mode by developing and maintaining a safe, comprehensive, convenient, accessible and aesthetically pleasing pedestrian system.*

Beach and South of Laurel Plan Circulation Policy 3.11: *Develop a safe, convenient and effective bikeway system that promotes bicycle travel as a viable transportation mode and connects work, shopping, schools, and residential and recreational areas.*

IP Section 24.12.240(1). Number of Parking Spaces Required: *1. Where the computation of required parking spaces produces a fractional result, fractions of one-half or greater shall require one full parking space. Residential Multi-Family: 1 bedroom – 1 stall per unit; 2 bedrooms – 2 stalls per unit; 3 bedrooms – 2 stalls per unit; plus 1 guest space per four residential units. Commercial Retail: 1 stall per 250 square feet [sf]. Restaurant: 1 stall per 120 sf. Business Office: 1 stall*

per 300 sf. Hotel: 1 stall per room, plus 1 space for the resident owner or manager.

IP Section 24.12.290(4). Cooperative Parking Facilities: The parking requirements for two or more uses of the same or different types on the same parcel may be reduced by the Zoning Board as part of a special use permit procedure if it can be demonstrated that the nature of the uses of the facility will result in multipurpose trips being made to the site or trips made to individual uses at different times of the day or week. The Zoning Board may permit no more than a ten percent reduction of the total number of spaces that would be required if each use was assessed independently.

IP Section 24.12.290(7) Variations to Requirements, Reduction in Parking Requirements for Non-Automobile Use Programs: The Zoning Administrator or Zoning Board may allow up to a ten-percent reduction in parking requirements for commercial or industrial developments if such developments include measures such as staggered work hours, provision of employee bus passes, provision of van/carpool programs or the like and provide enforceable permanent agreements to carry out the program.

IP Section 24.12.250(a)(2). Bike Parking Requirements: 1. Bicycle parking facilities shall be provided for any new building... 2. Bike Spaces and Type Required. Bicycle parking facilities' quantity and type shall be provided in accordance with the following schedule, with fractional quantity requirements for bike parking over one-half to be rounded up. Each bicycle parking space shall be no less than six feet long by two feet wide and shall have a bicycle rack system in compliance with the bike rack classifications listed in subsection (3). Fractional amounts of the type of parking facilities may be shifted as desired:

		Number of Bicycle Parking Spaces Required	Classification
a.	Commercial, industrial, office, retail, service		20% Class 1 80% Class 2
	Number of auto parking spaces	2 + 15% of auto parking requirement	
b.	Multifamily residential (3 or more units)	1 space per unit	100% Class 1 garages or secure accessible indoor areas count One space per four units Class 2

3. Classification of Facilities. a. "Class 1 bicycle facility" means a locker, individually locked enclosure or supervised area within a building providing protection for each bicycle therein from theft, vandalism and weather. b. "Class 2 bicycle facility" means a stand or other device constructed so as to enable the user to secure by locking the frame and one wheel of each bicycle parked therein. Racks must be easily usable with both U-locks and cable locks. Racks should support the bikes in a stable upright position so that a bike, if bumped, will not fall or roll down. Racks that support a bike primarily by a wheel, such as standard "wire racks," are damaging to wheels and thus are not acceptable. (See Bikes are Good Business design guidelines.)

Appeal Contentions

One Appellant contends that the City-approved project will impact public access in the highly visited West Cliff Drive area, specifically that: 1) the project will create direct competition for the limited street parking available in the area that provides for coastal access; 2) there is no separate onsite residential guest parking, meaning that guests of the residents will park in the limited on-street parking spaces, which would limit coastal access parking for non-project recreational uses, and; 3) the project will have a negative impact on traffic in the area, which would further impact coastal access and safety. See **Exhibit 5** for the appeal contentions.

Analysis

Parking

As discussed above, the City-approved project includes the removal of the existing surface parking lot (which includes 216 marked parking stalls). Parking for the mixed-use project would include 52 new ground-level parking spaces (primarily for general public use for a fee or via commercial validation), 152 parking spaces in underground parking Level P1 (for residential use) and 217 parking spaces in underground parking Level P2 (primarily valet parking for the Dream Inn hotel and the Jack O'Neill restaurant),⁴¹ for a total of 421 parking spaces (see **pages 2 to 4 and page 41 of Exhibit 3**). The underground parking garages would be accessed from the ground-level parking garage via separate ramps.⁴²

A parking analysis was done for the project using the requirements of IP Sections 24.12.240(1), 24.12.290(4), and 24.12.290(7). The project's resultant parking requirements are shown in the table below:

⁴¹ The Dream Inn includes another 30 parking spaces on the seaward side of West Cliff Drive that are used for valet parking for guest use, and these parking spaces would be unchanged in the project.

⁴² All parking stalls in the first underground parking garage (for residential use) will be "EV" adaptable, meaning they will have electrical infrastructure. Upon request by a resident or a prospective resident, the actual charging devices would be installed (by the Applicant prior to the turnover of operations to the Homeowners' Association (HOA), or by the HOA after the turnover date). The second underground parking garage (hotel valet use) will not have EV infrastructure; however, nine EV chargers would be available for hotel guests and the general public in the project's ground-level parking garage.

Project Site LCP Parking Requirements	Parking Spaces Required
Proposed residential units (89 units)	
25 1-bedroom units	25
46 2-bedroom units	92
18 3-bedroom units	36
Guest parking	22
Residential total	175
Proposed commercial facilities	
Commercial retail - 8,265 square feet	33
Dining - 7,525 square feet	63
Office (hotel administration) - 1,646 square feet ^a	0
Commercial total	96
Existing uses	
Dream Inn ^b	165
Jack O'Neill Restaurant and Lounge ^c	45
Existing total	210
Overall LCP parking requirement	
Existing + proposed	481
LCP allowed 20% reduction	-96
LCP-required parking total	385

a = Considered an “ancillary” use to the Dream Inn

b = Based on 164 rooms

c = Based on 5,416 square feet

Under the LCP, and without any credits for shared (cooperative) parking or implementation of auto reduction programs, the project would be required to provide 481 onsite parking spaces. As cited above, IP Sections 24.12.290(4) and 24.12.290(7) allow a 10 percent reduction for cooperative parking facilities and a 10 percent reduction for non-automobile use programs, respectively.⁴³ The parking demand accounts for all uses at the hotel as well as the residential uses, which qualifies the project for a 10 percent reduction for cooperative parking. Specifically, the shared use/cooperative parking facilities reduction accounts for the parking facilities at a single site being used for multipurpose trips being made to the site (e.g., visitors stay at the hotel and attend a

⁴³ The project was approved in October 2019. On June 19, 2021, the Commission approved an amendment to the parking standards of the City’s IP (Amendment No. LCP-3-STC-20-0040-2-Part A) that, among other things, increased the allowance for parking reductions if certain criteria are met. The idea of the amendment was not to simply reduce parking requirements, but more to re-envision how much space the City needs to allot to parking, as opposed to potentially higher and better benefits and uses. The amendment language incorporated a variety of TDM strategies and includes the requirement of more detailed evaluations (e.g., by a civil or traffic engineer) when parking reductions are considered, including to ensure that potential impact to on-street parking needs (such as for public access parking) are clearly addressed. Under the approved amendment, the total number of required parking spaces may be reduced up to 35 percent using one or more of a variety of strategies, including for cooperative parking facilities and non-automotive use programs (such as have been implemented for the City-approved project). However, the LCP in place when the City approved the project is the standard of review for this substantial issue determination, which means that a maximum 20 percent parking reduction applies to the project (instead of a maximum 35 percent parking reduction under the current LCP, as amended).

conference, visit the project's commercial and retail offerings, and/or eat at the Dream Inn restaurant or the project's Market Hall). Regarding the reduction for non-automotive use programs, the project includes a Transportation Demand Management plan that outlines measures to be implemented to reduce parking needs, including free employee bus passes, onsite provision of bicycle parking for both residents and the general visiting public,⁴⁴ among other strategies to be developed by the City.⁴⁵ Thus, and given the above, the combined 20 percent reduction in the parking requirement provided by IP Sections 24.12.290(4) and (7) is warranted. With 421 parking spaces provided on the site, and 18 existing marked parking spaces⁴⁶ on the Dream Inn hotel site (which will not be affected by the project), the overall project has a surplus of 54 parking spaces (i.e., 439 total parking spaces minus 385 parking spaces required under the LCP).^{47,48} Thus, the data in the above table demonstrate that the project's parking will be sufficient to accommodate peak parking demands (e.g., a fully booked Dream Inn) based on the specific development standards and other requirements of the LCP that ensure adequate parking distributed throughout an area. Therefore, the project is adequately parked and should not result in off-site (and on-street) impacts of the type asserted in the appeals.

The number of bicycle racks (66 for the general public on the ground level and 281 in the first underground parking garage – see pages 42-43 of **Exhibit 3**) greatly exceeds the requirements of IP Section 24.12.250(a)(2).⁴⁹ Further, the project's inclusion of bicycle racks for the general public is consistent with the LCP, and 281 bicycle parking spaces for the residents meets BSOL Plan Policies 1.13 and 3.8, and would allow for alternative non-automotive access to the site that will further limit the need for automobile parking. Given all the above, the project should provide adequate onsite parking for the hotel and the project's various mix of uses, while also providing for

⁴⁴ In terms of bicycle parking, a total of 347 bicycle parking spaces will be provided, including bike racks on the ground level available for general public use that can accommodate 66 bicycles. The remaining 281 bicycle racks will be available as long-term bicycle parking for residents and hotel and commercial space staff, which would be located in a secure storage space in the first underground parking garage level.

⁴⁵ Other incentives include onsite electric car share (such as Zip, Blink, or Envoy) or electric bike share. Another incentive is unbundled parking, where residents pay for each parking space that they use as part of their HOA dues; those residents who choose not to own a car (but rather walk, bike, use bus or non-public transit (such as Lyft and Uber) or onsite car share) will not pay an HOA parking fee.

⁴⁶ The Dream Inn has an additional 12 unmarked parking spaces, but the parking study did not rely on those unmarked spaces in its analysis.

⁴⁷ The project does include the removal of four metered public parking spaces along Bay Street to accommodate development of the roundabout. However, the project includes the addition of 52 onsite parking spaces that will be available to the general public.

⁴⁸ The parking analysis calculation includes 22 parking spaces for residential guests, as required by IP Section 24.12.240(1), which will be accommodated in both the ground-level parking lot and in the underground lowest-level parking garage.

⁴⁹ This IP Section requires 89 Class I bicycle spaces for the residential uses (one space per unit) and 48 for the project's commercial uses, the hotel, and the Jack O'Neill restaurant (2 + 15% of the automobile parking requirement (306) for those uses), for a total LCP requirement of 137 bicycle spaces. The project includes a total of 347 bicycle spaces, or nearly 200 more bicycle parking spaces than are required by the LCP.

alternative (i.e., bicycle) access to the site, and thus the project should not adversely impact off-site (and on-street) general public access parking.

Traffic

One Appellant contends the project will have significant traffic impacts that will adversely affect public access. The project included a traffic study that evaluated the options for a traffic light or a roundabout at the West Cliff Drive/Bay Street intersection (see page 23 of **Exhibit 3**). The approved project includes the construction of a “mini” roundabout at the West Cliff Drive/Bay Street intersection.⁵⁰ The mini roundabout was chosen over the traffic light because it would reduce traffic delay and provide a slower (and thus safer) and more consistent traffic flow than a signal, and also would provide a better pedestrian experience and result in fewer greenhouse gas emissions than a traffic signal. The West Cliff Drive/Bay Street intersection would operate at a Level of Service (LOS)⁵¹ A-B during the weekday PM peak hour and at LOS B during the Saturday midday peak hour. The current LOS at this intersection is E during the weekday PM peak hour and C on Saturday midday, so the approved project would improve the LOS at this intersection. Other nearby intersections would generally continue to operate at a similar LOS to existing (of D or better), except the Bay Street/California Street intersection, which would change from LOS D to E at Saturday midday.⁵² As noted in the “parking” finding above, the project is conditioned to require TDM measures that result in a 10% reduction in predicted trip generation rates, which, in addition to the roundabout, should further reduce the project’s projected traffic generation.

In terms of pedestrian access/safety in the vicinity of the project site, the existing sidewalks directly adjacent to the project site along West Cliff Drive and Bay Street would be widened. Currently, these sidewalks are six feet wide with utility poles⁵³ located within the sidewalks. The sidewalk along West Cliff Drive would be widened to 8 feet minimum, and up to 20 feet in front of the Market Hall. The sidewalk along Bay Street would be widened to 8 feet, except at the corner at West Cliff Drive where it would be widened to 20 feet. Additional safety improvements for pedestrians and bicyclists include high visibility crosswalks, new pedestrian-scale lighting, pedestrian-activated rapid flashing beacons for the crosswalk that crosses West Cliff Drive, and a larger pedestrian refuge median at the mid-block crosswalk on West Cliff Drive. Bike improvements would include additional “green” bike lanes along existing bike routes, and new protective curbs for the bicycle track along West Cliff Drive. Finally, the project includes the relocation of the existing driveway on West Cliff Drive to the north property

⁵⁰ Currently there is a three-way stop sign at this intersection. A “mini” roundabout operates as a traditional roundabout for vehicles, but it also has a rolled curb without any barriers otherwise that allows drivers of emergency vehicles to traverse over the center of the roundabout, if they choose, instead of going fully around the roundabout.

⁵¹ Level of service (LOS) is a term used to qualitatively describe the operating conditions of a roadway based on factors such as speed, travel time, maneuverability, delay, and safety. The level of service of a facility is designated with a letter, A to F, with A representing the best operating conditions and F the worst.

⁵² The traffic study concludes that the analysis software utilized may overestimate this impact.

⁵³ The project includes placing these power lines underground.

line, and removal of two of the three driveways on Bay Street, with the remaining driveway being located adjacent to the mobile home park.

The City-approved project is consistent with the above-cited BSOL Plan provisions that require circulation improvements that balance the needs of automobiles, pedestrians, and bicyclists; narrow roadways to slow traffic; wide sidewalks for promenades and pedestrian-oriented activities; and safe and convenient pedestrian and bicycle travel. Further, the project enhances pedestrian and bicycle public access and recreational enjoyment in a manner consistent with LUP Land Use Element Policy 3.5 and with the above-cited Coastal Act public access policies. Thus, project-related traffic is not expected to result in significant adverse effects on public access circulation, and in many respects should actually enhance such circulation to the benefit of general public access.

In short, the City-approved project provides for new and significant public access, recreation, and visitor-serving amenities at a site where none exists now and should not otherwise lead to any sort of significant adverse public access impacts. As a result, the project appears to be consistent with the LCP and the Coastal Act in terms of protecting public access, and thus the City's approval of a CDP for the proposed project does not raise a substantial LCP conformance issue in this respect.

5. Geology/Drainage/Groundwater

Applicable LCP Provisions

The LCP requires site-specific geologic investigations for development within 100 feet of coastal bluffs, and also requires that new development not degrade surface or groundwater and that grading not increase flood potential. For development in the Shoreline Protection Overlay (SP-O) district, the LCP requires that alterations to landforms be minimized, that development not contribute to significant erosion or geologic instability. Specifically, the LCP requires:

LUP Water Quality Policy 2.3: *Ensure that new development or land uses near surface water and groundwater recharge areas do not degrade water quality.*

LUP Flooding Hazards Policy 3.1.3: *Control filling, grading, dredging, and other development that may increase flood potential.*

LUP Safety Element Policy 1.2.1: *Require site specific geologic investigations for all development within 100 feet of existing coastal bluffs.*

IP Section 24.10.2430(2) [in relevant part]: *Before approving a coastal permit in the Shoreline Protection Overlay District, the hearing body must find that the proposed development will:* 2. *Be consistent with the following criteria for bluff or cliff development:* a. *The development is sited and designed to assure stability and structural integrity of its expected economic life span and minimize alterations to natural landforms.* b. *The development will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas.* c. *The development minimizes alteration of cliffs, bluff tops, faces or bases, and will not interfere with sand*

movement. ... e. The development within one hundred feet of any cliff or bluff line shall follow the recommendations of an approved geologic report by a registered geologist. The area where such a report is required may be increased where the issue of slope stability requires a greater distance from any cliff or bluff line.

Appeal Contentions

Several appeals contend that the approved project did not adequately evaluate the impacts of the excavation necessary to construct the two levels of underground parking, particularly with respect to groundwater and the potential to encounter debris and/or fill from past episodes of grading and construction at the site. One appeal further contends that the excavation necessary for development of the underground parking garages does not minimize cut and fill, earthmoving, or grading operations, as required for development located in the Shoreline Protection Overlay district. See **Exhibit 5** for the full appeal documents.

Analysis

The two levels of underground parking will require excavation up to 29 feet⁵⁴ below grade, requiring cut and fill volumes of approximately 60,600 cubic yards and 2,600 cubic yards, respectively, with a net of 58,000 cubic yards excavated and removed from the site. As required by LUP Safety Element Policy 1.2.1, several geotechnical investigations were done, with recent reports based on several soil borings and measurements of soil properties. The project also relies on a comprehensive 2004 geotechnical study done for a previously proposed project at the site (the Coast Hotel project), which never came to fruition. During field borings, groundwater was present at 12 to 16 feet below grade and was assumed in the geotechnical reports to be groundwater perched on Purisima bedrock.

Regarding the LCP's requirement that landform alteration be minimized, the project site is located on a flat 2.2-acre site inland of both West Cliff Drive and the existing Dream Inn (see **Exhibits 1** and **2**). While the grading volume is substantial, the approved project is located on a flat inland parcel where the resultant grading will not lead to any actual perceived landform alteration (e.g., as might be associated with grading on a coastal bluff). Furthermore, with respect to the LCP's requirement that the project not contribute to erosion or geological instability, based on the geology of the area, the width of the beach located seaward of the Dream Inn, the fact that substantial development exists between the project site and the bluff edge (specifically the Dream Inn hotel, West Cliff Drive, and public utilities), and especially the distance between the project site and the bluff face (a minimum of 100 to 150 feet for the portion of the site closest to the bluff, with the vast majority of the site being 150 to 400 feet from the bluff edge), the Commission's Senior Staff Geologist, Dr. Joseph Street, concluded that the

⁵⁴ The project plans show an excavation depth range between 21 feet and 29½ feet, where pre-project boring depths extended to 29½ feet below grade. The revised geotechnical investigation (prepared by Haro, Kasunich and Associates, Inc., dated revised February 14, 2018) stated that the proposed excavation for the parking garages will be "on the order of 24.0 feet below ground surface," which identifies it as an approximation. That geotechnical investigation was based on preliminary architectural drawings and not the detailed construction drawings that will be prepared at the building permit stage. At that time, an updated geotechnical report will also be required.

project will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas, and should be safe from coastal erosion impacts for its estimated 75- to 100-year project life. Thus, the project is consistent with IP Section 24.10.2430(2).

Regarding groundwater and drainage, although the geotechnical reports show groundwater at 12 to 16 feet below grade in this area, it was the opinion of the geotechnical experts that this is perched groundwater and not indicative of a static water table. Thus, dewatering would be required during the construction phase of the project and there are two dewatering options: discharging to the sanitary sewer system or discharging to the storm drain system. Discharge to the sanitary sewer system would require the Applicant to submit a wastewater discharge application to the City, and the City would then determine if the sewer system has the capacity for the proposed discharge and would bill the Applicant based on discharge flow volume/rates. The second option, discharging into the storm drain system, would require a permit from the State Water Board/Regional Water Quality Control Board to ensure that Clean Water Act requirements were met. The method of dewatering would be determined as part of the building permit process. Post construction, the project would be required to adhere to California Building Code Standards regarding “damp-proofing and waterproofing,” and these standards would be implemented as part of the building permit process. In short, the project has appropriately addressed potential groundwater issues in a manner consistent with the LCP.

And, finally, if any debris/fill from past episodes of grading and construction at the site are discovered during excavation activities (which can be a common occurrence when redeveloping a previously developed site in an urbanized area), the City, the Applicant, and the construction crew would determine at that time the best course of action to take to address same.

In conclusion, the City-approved project appears to be consistent with LCP’s geology/drainage/groundwater requirements, and thus the City’s approval of a CDP for the proposed project does not raise a substantial LCP conformance issue in this respect.

6. Other Contentions: Air Quality and Noise

Applicable LCP Provisions

The LCP does not contain any noise policies, but does require consistency with the regional Air Quality Management Plan (AQMP), associated with the area, and states:

LUP Environmental Quality Element Policy 1.1: Ensure that population growth does not exceed AQMP population projections and review proposed land-use projects for their consistency with the AQMP and for potential air quality impacts.

Appeal Contentions

Several Appellants contend that additional traffic, including truck deliveries and parking at the site, will result in noise and air quality impacts to the Clearview Court mobile home park. These Appellants further contend that noise from the City-approved commercial uses will be disruptive to nearby residential uses, such as the Clearview

Court mobile home park and the existing townhomes located across Bay Street. See **Exhibit 5** for the Appellants' contentions.

Analysis

Based on a "Traffic Health Risk Assessment Screening Analysis" that was done for the project, which analysis conservatively concluded that potential health impacts from project-related vehicle emissions would be well below health impact thresholds, the City concluded that Clearview Court residents and other nearby residents should not experience any health impacts due to the project's vehicle emissions. Such conclusion appears reasonable based on that analysis. Furthermore, the City's population and existing and approved housing units (including the project) do not exceed regional housing forecasts; thus, the project does not conflict with the current adopted AQMP and the project can be found consistent with LUP EQ Element Policy 1.1.

Regarding noise, the City-approved project includes an eight-foot-tall sound wall along the project's boundary with Clearview Court mobile home park, which should help to address sound impacts from vehicles entering the driveways on the project site for deliveries and/or to park in one of the three parking areas (two of which are underground). In terms of noise from the commercial areas affecting nearby offsite residential uses, the commercial uses are located along West Cliff Drive with the project's multistory residential development located between the commercial development and the Clearview Court mobile home park. A café, a spa, and retail space would be located on the corner of West Cliff Drive and Bay Street, across the street from some of the existing townhomes, and there would be delivery truck traffic along the project's driveways, but these uses are not expected to produce excessive noise. Furthermore, the project is conditioned that any amplified music in the commercial area's Paseo courtyard must not be audible from any offsite residential property.

There will be noise during construction. The project is conditioned to limit construction activities to be 7 a.m. and 6 p.m. Monday through Friday except for construction processes that require extended hours (such as concrete pouring). Conditions require that the adjacent residents be notified of the construction schedule and given contact info to address construction questions or concerns.

In conclusion, the City-approved project appears to be consistent with LCP's air quality and all noise impacts are appropriately mitigated, and thus the City's approval of a CDP for the proposed project does not raise a substantial LCP conformance issue in this respect.

7. California Environmental Quality Act (CEQA)

The appeal contends that the environmental review process was not adequate and project alternatives were not evaluated because the City granted a CEQA exemption instead of completing an EIR for the project.

CEQA provides that an earlier analysis may be used to evaluate a project if it can be determined that its effects have been previously identified in an earlier EIR or negative declaration (per CEQA Guidelines section 15063(c)(3)(D)). If an earlier analysis is used, then CEQA requires that an initial study be completed that identifies the earlier analysis,

identifies effects that were adequately analyzed in the earlier document and applicable mitigation measures, and describes how these mitigation measures were incorporated into the project to address site-specific conditions for the project. CEQA also allows a lead agency to avoid repeating analyses that were provided in a certified General Plan EIR for a development that is consistent with the General Plan (also requiring an initial study).

The City adopted its *General Plan 2030* in 2012 after certifying an EIR for the General Plan. The General Plan did not consider specific future development at the site, but the EIR for the General Plan considered construction of new housing units and non-residential uses in the City. And per the City, the project's 89 residential units and commercial space would be within the remaining residential and commercial buildout estimates considered in the Citywide General Plan's EIR impact analyses. The City did an Initial Study for the project and found that the City's 2030 General Plan EIR adequately addressed all potential specific issues that the project may raise and determined that the project's site-specific impacts would be less than significant with the application of General Plan policies, zoning regulations and development standards.

Therefore, the City, acting as CEQA lead agency, and after completing an initial study, granted the project a CEQA exemption. At the same time, the City required the project to be consistent with applicable mitigation measures from the General Plan 2030 EIR, and additionally with those identified in the environmental documents specifically prepared for this project (e.g., arborist reports, geotechnical reports, etc.). In short, two things are noted. One, CEQA contentions are not a valid appeal contention; rather the standard of review for appeals is the LCP and the Coastal Act's access provisions. And even were such CEQA contentions framed in an LCP context, the above analysis of the project on appeal adequately accounts for any substantive resource issues that could be attributed to such concerns. Thus, the CEQA contentions do not raise a substantial LCP conformance issue.

8. Five Substantial Issue Factors

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity and/or Coastal Act public access conformity, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP and/or Coastal Act conformance. The Commission's regulations lay out the following five factors that it may consider, but is not limited to, when determining whether the issues raised in a given appeal are "substantial" (14 CCR Section 13115(c)): the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. In addition, 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. First, as described above, the City's action is adequately supported by the evidence in this case. Although it is true that some aspects of the approved project do not comply with the LCP, it is also true that the City allowed deviations via state density bonus law and associated LCP provisions referencing same. Importantly, the evidence shows that those deviations should not lead to significant adverse coastal resource impacts, which is a key aspect supporting the City's decision. The first factor weighs against substantial issue.

As to the extent and scope of the approved development, the project is fairly large. At the same time, it is located on a large commercial site where the LCP allows a fairly large extent and scope of development, and it is not so large as to warrant additional review on this point alone. Thus, the second factor weighs against substantial issue as well.

With respect to the third factor, the significance of the coastal resources impacted by the City's decision, the site is a prominent site in the beach commercial area, and the project also affects the West Cliff Drive corridor, which is one of the most important visitor-serving and public access areas in the City. In other words, the coastal resource significance is high. At the same time, and as described above, the project is essentially a visitor-serving and public access enhancement, including on and off-site. In terms of public views, which are important coastal resources as well, the project will modify the public view corridor, but it will also arguably enliven and energize that view corridor, including in terms of tree retention, removal, relocation, and replanting. In short, affected coastal resources are significant, but the project appropriately protects such resources against significant adverse disruption, and thus the third factor too weighs against substantial issue.

In terms of the precedential value of the City's decision for future interpretation of the LCP, this decision is limited to the specific facts and details of this case, including based on the specificity of the provisions applicable to this site. And while it clearly implicates the larger question of how to apply state density bonus law in the coastal zone, the outcome respects both state density bonus law and the Coastal Act/LCP, and thus any precedential aspects would be favorable in that sense.⁵⁵ The fourth factor also weighs against substantial issue. And for largely the same reason, although state density bonus law and its implications under the Coastal Act and LCP are issues of regional/statewide significance, they are appropriately addressed here, and the analysis is similar to the fourth factor. Thus, the fifth factor also weighs against substantial issue.

In short, analysis of the CCR Section 13115(c) five factors support a conclusion that the City's approval of a CDP for the proposed project does not raise a substantial LCP

⁵⁵ And, in fact, the outcome for a different project where state density bonus law was applied under the LCP had a similar outcome (i.e., the mixed residential (including affordable housing) and commercial use project on Front Street from 2021 (A-3-STC-21-0013)), and the Commission found no substantial issue in that case as well for similar reasons. In other words, this is another appropriate outcome, building on the same type of appropriate outcome in that prior case as well. To the extent there is an LCP precedence being established (and the fact that all projects are case-specific examinations of the facts and the law as applied to that case argues against that), it appears to be a good one.

conformance issue.

9. Conclusion

The primary issue in this appeal is whether the scale of the development approved by the City is appropriate under the City's LCP. In this case, the proposed development meets most objective LCP standards (for parking, open space, square footage, etc.) except that it includes 23 more residential units than the maximum allowed under the LCP (i.e., the LCP allows 66 units maximum, and the project includes 89 units), it is at least one story and up to 20 feet taller than the maximums allowed under the LCP (i.e., 36 feet maximum height is allowed, and the project is four stories and extends to 47 feet in height for most elevations, and up to 56 feet in height at the rooftop patios), it does not include certain upper story building setbacks, and includes rooftop decks/patios when the LCP would not allow for such decks/patios. In other words, the project is not consistent with the LCP on these points. In allowing for such LCP inconsistencies, the City relied on the application of state density bonus law, which allows for deviations from such requirements under certain parameters when affordable housing is provided (and here 10 affordable units would be provided, including 8 units available to those with very low income) where the LCP explicitly allows for numerical limits to be adjusted in such cases. However, state density bonus law does not override the LCP (which is an extension of another state law, namely the Coastal Act), and cannot be implemented in a way that conflicts with the Coastal Act. Thus, ultimately, the primary question in this circumstance is whether the City's action adequately protects coastal resources under the LCP with the exceptions applied. The Commission determines that it does.

Specifically, although the increase in number of dwelling units, stories, height, and the setback and roof deck deviations, are not insignificant, the larger resultant project should not significantly adversely affect character and public views at this location more than would an LCP-consistent project, particularly given the urban context and the fact that the project would be located inland of the first public road in an area where it is unlikely to affect important immediate shoreline public views. In fact, the Dream Inn (which extends to eight stories and about 80 feet in height as seen from the streetside) would essentially block it from most views from the immediate shoreline area, and an adjacent townhouse development is of a similar scale as the project. In addition, the project buildings' total square footage is actually less than what would be allowed for an LCP-consistent project because the project includes a roughly 17,000-square-foot open public plaza area (dubbed the Coastal Paseo) and the project's setbacks along the rear and interior side yards (which are adjacent to a mobile home park) are substantially larger than those required under the LCP over all four stories. Because of this, the overall square footage of the project (and the total above-ground mass) is actually less than what could be approved as consistent with the LCP without the exceptions applied. Thus, in this case, the affordable housing-related deviations applied through state density bonus law provisions (and here the Applicant would also donate \$500,000 to the City's affordable housing reserve fund) should not lead to significant and inappropriate coastal resource impacts related to mass and scale.

As to other appeal contentions, the site is LUP-designated for regional/visitor/beach commercial uses and allows for residential use in a mixed-use setting, such as this. The project also includes an extension of ancillary Dream Inn uses, as well as plazas and

pedestrian spaces, public and commercial parking, and recreational/cultural uses, all of which are also allowed at this site. In terms of public access, the project includes substantial onsite bicycle parking for both residents and the general visiting public, a new roundabout that will improve traffic congestion at the West Cliff Drive/Bay Street intersection, sidewalk widening and other pedestrian/biking improvements, and the Coastal Paseo that will provide general public visitor-serving access and recreation in an area where none exists now. As to tree removal and replanting, the project meets all LCP requirements, including that the project includes nesting surveys and appropriate protections for nesting birds during tree removal. In terms of air quality, vehicle emissions associated with the project would be well below health impact thresholds. As to noise, the project includes a sound wall along the project's boundary with the adjacent mobile home park, most parking is subterranean, and the majority of the commercial areas are located along West Cliff Drive (with buildings in between the commercial areas and adjacent residential areas). The project is also conditioned to require that any amplified music in the Coastal Paseo not be audible to any offsite residential property. In terms of construction noise, the project is conditioned to allow construction only during weekday daylight hours and requires that the adjacent residents be notified of the construction schedule and given contact info to address construction questions or concerns. Regarding groundwater/drainage, there is a perched groundwater layer that will require dewatering during construction, and damp-proofing/waterproofing after construction, but nothing that is not allowed by the LCP. Finally, CEQA contentions are not a valid appeal contention, and even if they were, the above analysis accounts for any substantive resource issues that could be attributed to such concerns.

In short, the Commission concludes that the appeal contentions do not raise a substantial issue. While it is true that the project does not meet all LCP requirements, it is also true that it does not appear to lead to any significant coastal resource impacts as a result, and thus can be allowed through an application of state density bonus law to the project. And projects like this that can appropriately protect coastal resources while accommodating both housing and affordable housing in developed areas able to handle it are important to help address the acute housing shortages—and especially affordable housing shortages—in our coastal communities. They can also help to relieve pressure for housing projects that might be proposed on the periphery of developed areas, or in rural or sensitive habitat areas, where such projects can raise significant coastal resource concerns.

Thus, and for all of the reasons identified in the findings above, the Commission finds that Appeal Number A-3-STC-19-0208 does not present a substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act and declines to take jurisdiction over the CDP application for the project.

3. APPENDICES

A. Substantive File Documents⁵⁶

- City of Santa Cruz Application File CP18-0043
- *Arborist Report and Tree Preservation Plan, 190 West Cliff Drive, Santa Cruz, California*. Prepared by Michael L. Bench, Consulting Arborist, in collaboration with Barrie D. Coate, Horticultural Consultant; Site observations May 8, 2018.
- *Final Project Parking Analysis*. Prepared by Larry D. Hail, CE, TE, PTOE (Pinnacle Traffic Engineering), dated January 28, 2019.
- *Traffic Impact Analysis*. Prepared by Prepared by Larry D. Hail, CE, TE, PTOE (Pinnacle Traffic Engineering), dated February 15, 2019.
- *Draft Transportation Demand Management (TDM) Plan*. Prepared by Fehr & Peers, dated June 18, 2018.
- *Traffic Health Risk Assessment Screening Analysis of 190 West Cliff Drive Project*. Prepared by Sarah Manzano and Michael Keinath (Ramboll Environment & Health), dated July 8, 2019.
- *Geotechnical Investigation – Dream Inn Mixed Use Development*. Prepared by Geocon Consultants, Inc., dated March 2017.
- *Geotechnical Investigation Update 1*. Prepared by Haro, Kasunich and Associates, Inc., dated November 20, 2017 and revised February 14, 2018.
- *Evaluation of Potential Impact of Excavation on the 190 West Cliff Drive Project Site on Coastal Bluff Stability*. Prepared by Gary B. Griggs, dated October 2, 2018.
- *Review of Geotechnical Reports by Geocon and Treadwell-Roll for Coastal Hotel/Dream Inn Mixed Use Development*. Prepared by Gary B. Griggs, undated.
- *Preliminary Stormwater Control Plan*. Prepared by Bowman & Williams, dated November 20, 2018.
- *Noise Analysis - Technical Memorandum*. Prepared by Michael Carr, INCE (Dudek), dated September 24, 2019.

B. Staff Contact with Agencies and Groups

- City of Santa Cruz Planning and Community Development Department

⁵⁶ These documents are available for review in the Commission's Central Coast District office in Santa Cruz.