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Appeal Filed: 10/2/2024
Action Deadline: 12/13/2024
Staff: Kiana Ford - SC
Staff Report: 10/25/2024
Hearing Date: 11/14/2024

STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal Number: A-3-STC-24-0044
Applicant: City of Santa Cruz
Appellant: Reginald Meisler
Local Government: City of Santa Cruz
Local Decision: Coastal development permit application number CP23-0144 approved by the City of Santa Cruz Zoning Administrator on April 17, 2024.
Location: Delaware Avenue, Natural Bridges Drive, Swanton Boulevard, and Mission Street Extension within the City of Santa Cruz.
Project Description: Implementation of a one-year pilot project to prohibit public parking between 5am and 7am twice a week (on Tuesdays and Thursdays, one side of the street each) to facilitate street sweeping along such streets, and related measures (i.e., signage, enforcement, etc.).
Staff Recommendation: No Substantial Issue

IMPORTANT HEARING PROCEDURAL NOTE

Please note that this is a substantial issue only hearing, and testimony will be taken only on the question of whether the appeal raises a substantial issue. Such testimony is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits), so please plan your testimony accordingly. Only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify during this substantial issue phase of the hearing. Other interested parties may submit comments

in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does *not* raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

SUMMARY OF STAFF RECOMMENDATION

The City of Santa Cruz approved a CDP for a one-year pilot project to limit parking along four city streets (Mission Street Extension, Natural Bridges Drive, Swanton Boulevard, and Delaware Avenue) within the coastal zone between the hours of 5am and 7am on one side of the street on Tuesday and on the opposite side of the street on Thursday (i.e., vehicles would be allowed to park on the opposing side of the street during those hours). The City contends that the parking restrictions are necessary in order to allow the City's street sweeping vehicles to access debris and trash that accumulates between parked vehicles and the curb, where normally parked vehicles impede such access and lead to refuse accumulation along areas linked to storm drainage systems. The City contends that the approved project will not negatively impact public access in those areas because the implementation is limited to a two-hour period in the very early morning where the majority of coastal access users are asleep, and because the subset of coastal access users that do utilize those parking spots during that time may park on the opposite side of the street. Further, the pilot project is intended to improve coastal resources by removing debris and trash and preventing such refuse from entering storm drainage systems and potentially migrating out into Monterey Bay.

The Appellant contends that the City's approval of the project raises LCP and Coastal Act consistency questions relating to public access, environmental justice, and water quality. Specifically, the Appellant argues that the program's parking restrictions do not maximize public access and would in fact limit public access; that the program violates Coastal Act environmental justice provisions and the Commission's Environmental Justice Policy because the program would disproportionately affect unhoused individuals who reside in their vehicles; and that the City's justification for such a program (i.e., higher trash levels on select streets that affect water quality) is not justified. After reviewing the local record, Commission staff recommends that the Commission find that the City's CDP approval does not raise a substantial issue with respect to the project's conformance with the City LCP and Coastal Act.

Overall, staff agrees that restrictions on public coastal access are not something to be taken lightly, including because the Coastal Act and LCP speak to maximizing public access, and arguably restrictions inherently do not do that. At the same time, the Coastal Act and LCP do not stand for such access at all costs, and instead provide for management, and sometimes restrictions, to address issues related to overuse, natural resource protection, and other needs. It is through this review lens that the Commission typically evaluates public access restrictions, including whether it is narrowly tailored to address the particular impact/goal it seeks to address. In this case staff believes that the City's pilot program meets such tests and can be found Coastal Act and LCP compliant.

Here, the public access question before the Commission is whether the City-approved program affects the public's ability to access and recreate in the coastal zone. As noted, the project would operate between 5am and 7am twice a week, a time when public access pursuits are typically quite limited and would still allow all coastal access users to park on one side of the street during those hours (put another way, the program would only impact half of the street's parking for a limited time two times per week). Thus, the effect of the City's action on public access is minimal in staff's view and the design of the program allows for continued coastal access in the area during those times.

And in terms of water quality, staff believes that the City justified their action based off of independent evaluation of street cleanliness, including efforts initiated as a part of their obligations to comply with State Water Resources Board Clean Water Act requirements. Arguably, allowing street sweeping vehicles to better access street curbs will invariably lead to reductions in trash accumulation and help to avoid impacts to water quality; whether that reduction is meaningful or not is part of the evaluation of this one-year pilot program. And finally, while the program will require vehicles parked on those sides of the streets to relocate between 5am and 7am (whether to the other side of the street or elsewhere), such an impact is minimal in terms of coastal resource impacts, as the pilot program still allows for such individuals to access the coast. Here, the City is seeking to evaluate improvements to its existing street sweeping program and has other programs (including the City's Oversized Vehicle and Safe Parking Program) that are intended to address the ongoing homelessness epidemic and provide services/resources to persons experiencing homelessness, and the City's approval does not represent disproportionate public access impacts to an environmental justice community (here, unhoused individuals who sleep in their vehicles).¹

As a result, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP and Coastal Act access conformance issue, and that the Commission decline to take jurisdiction over the CDP application for this project. The project at its core is a basic municipal street sweeping function, designed to be carried out in a manner that does not raise any significant public coastal access problems, and is only for an initial one year term to assess its efficacy at reducing trash and protecting the environment. The single motion necessary to implement this recommendation is found on **page 5** below.

¹ As it applies specifically to oversized vehicles, the City's Oversized Vehicle and Safe Parking Program prohibits parking of oversized vehicles on City streets between midnight and 5am, and also provides free overnight safe parking locations with various services in the City for overnight vehicles (see City CDP CP23-0176). That safe parking program allows oversized vehicles to park until 8am, and so oversized vehicles that are already not allowed until 5am on these four streets have an alternative safe place to park even when street sweeping may occur. Thus, the Appellant's observation that potential parking citations would lead to disproportionate public access impacts to unhoused individuals who sleep in vehicles at night is belied by the facts that all vehicles – whether used for habitation or not – have available alternatives for parking that avoids citations (and such alternatives are low-barrier for those with limited resources) during the 5am to 7am street sweeping time, including parking across the street, on other streets, or, in the case of oversized vehicles, availing themselves of the City's free safe parking program; and the actual public access impact of street sweeping parking restrictions between 5am and 7am is negligible given the limited nature of such pursuits at that hour.

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EXHIBITS

- Exhibit 1 – City-Approved Street Sweeping Area
- Exhibit 2 – City’s Final Local CDP Action Notice
- Exhibit 3 – Appeal of City CDP Approval

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-24-0044 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-24-0044 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 Description and Location

The City-approved project would prohibit parking of vehicles on certain sides of four public streets within the coastal zone between 5am and 7am on Tuesdays and Thursdays for a one-year “pilot” period to conduct street sweeping via the City’s array of street sweeping vehicles. Specifically, the project would affect four streets within the coastal zone on the City’s westside: Delaware Avenue, Natural Bridges Drive, Swanton Boulevard, and Mission Street Extension.² The pilot program would prohibit parking on one side of the street on Tuesdays (but allow parking on the opposite side of the street) and prohibit parking on the other side of the street on Thursdays (again, with the ability to park on the opposite side of the street), thereby ensuring that at least one side of each affected street is available for public parking during such sweeping activities. The program would also install signage to alert the public of the program and indicate the penalties for parking during those sweeping times (i.e., towing and/or fines).

The City indicates that the reason for the City-approved program is to address ongoing public health and water quality issues associated with accumulated trash in these areas. While the City already has a City-wide street sweeping program in place, the existing program does not prohibit cars from parking during street sweeping operations. The City asserts that trash and other debris frequently accumulates between parked cars and the

² The City-approved program also includes four other routes outside of the coastal zone (see **Exhibit 2**).

curb and that the street sweepers are unable to reach such material during normal operations, leading to the eventual migration of material into storm drains and out into waterways. Thus, the one-year pilot program is intended to evaluate the effectiveness of modified street sweeping operations via the prohibition of parking (including via assessing the amount of trash picked up, evaluating street cleanliness, and determining the amount of enforcement necessary) and after a year, reassess whether to extend the program for subsequent years via a new CDP action.

See **Exhibit 1** for a map of the City-approved parking restriction area and see **Exhibit 2** for the City-approved project description and conditions.

B. City of Santa Cruz CDP Approval

On April 17, 2024 the City of Santa Cruz Zoning Administrator approved a CDP for the proposed pilot street sweeping program. The Zoning Administrator approval was subsequently followed by City Council approval on August 27, 2024.³ The City's Final Local CDP Action Notice (see **Exhibit 2**) was received in the Coastal Commission's Central Coast District Office on September 20, 2024, and the Coastal Commission's ten-working-day appeal period for this action began on September 23, 2024 and concluded at 5 p.m. on October 4, 2024. One valid appeal (discussed below) was received during the appeal period.

C. Appeal Procedures

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

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP and/or to Coastal Act public access provisions. For appeals of a CDP denial, where allowed (i.e., such appeals are only allowed in extremely limited circumstances – see description of appealable actions,

³ The Zoning Administrator approved the CDP for the project, but the project's overall implementation and enforcement (including for sites located outside of the coastal zone) required authorization by the City Council. Thus, the Council's action constituted the final City action on the CDP application for the project.

above), the grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions.

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

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.⁴ At this stage, the Commission may only consider issues brought up by the appeal. At the substantial issue hearing, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no such hearing is requested, a substantial issue is automatically found. In both cases, when the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

If, following testimony and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the local government's CDP decision stands. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal.

In the second phase of the appeal, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances the Coastal Act's public access and recreation provisions). This step is

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

often referred to as the “de novo” review phase of an appeal, and it entails reviewing the proposed project in total. There is no legal deadline for the Commission to act on the de novo phase of an appeal. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing (if applicable).

D. Summary of Appeal Contentions

The Appellant contends that the City’s CDP approval raises LCP consistency questions relating to public access, environmental justice, and water quality. Specifically, the Appellant contends that the approved project would violate applicable LCP policies because (1) it does not maximize public access and would in fact limit public access via the program’s parking limitations and enforcement protocols; (2) it violates Coastal Act environmental justice provisions and the Commission’s Environmental Justice Policy because it would unfairly impact access to the coast for low-income individuals and individuals who use their vehicles for shelter; and (3) the City’s water quality concerns regarding trash accumulation on these specific streets are not justified. Please see **Exhibit 3** for the full appeal document.

E. Substantial Issue Determination

1. Public Access

Applicable Coastal Act and LCP Provisions

The Appellant does not cite to specific LCP or Coastal Act public access policies, but applicable policies on this point include the following Coastal Act provisions:

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

Section 30211. *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization...*

Section 30212. *(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects ...*

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

Section 30214. *(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following: (1) Topographic and geologic site characteristics. (2) The capacity of the site to sustain use and at what level of intensity. (3) The appropriateness of limiting public access to the right to pass*

and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses. (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

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

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

LCP public access provisions both reiterate and amplify these Coastal Act provisions, including stating in the LCP's Land Use Plan (LUP):

LUP Parks and Recreation Policy 1.7. *Develop plans to repair, maintain and maximize public access and enjoyment of recreational areas along the coastline consistent with sound resource conservation principle[s], safety, and rights of private property owners.*

LUP Parks and Recreation Policy 1.7.1. *Maintain and enhance vehicular, transit, bicycling and pedestrian access to coastal recreation areas and points.*

LUP Land Use 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.*

LUP Land Use Policy 3.5.3. *Require new development and public works projects to provide public access from the nearest public roadway to the shoreline and along the coast, except where it is inconsistent with public safety, protection of fragile coastal resources, or where adequate access exists nearby.*

LUP Land Use Policy 3.5.5. *Develop and implement plans to maximize public access and enjoyment of recreation areas along the coastline.*

In sum, Coastal Act Section 30210 and LCP Policy 3.5 require Coastal Act-authorized development to maximize public access and recreational opportunities. Coastal Act Section 30211 prohibits development from interfering with the public's right of access to

the sea where acquired through use or by legislation. In approving new development, Section 30212 requires new development to provide access from the nearest public roadway to the shoreline and along the coast, save certain limited exceptions, such as existing adequate nearby access, and 30213 protects existing and encourages new lower cost forms of access. Section 30214 allows for public access policies to consider the unique characteristics of new development, and to allow for public access to be tailored in an appropriate manner in light of that context. Sections 30220, 30221, and 30223 protect coastal, oceanfront, and upland areas for public access and recreational uses. New development in areas adjacent to parks and recreational areas must protect those areas under Section 30240(b). Similarly, LUP Policies 1.7 and 3.5.5 direct the City to develop (and implement in terms of Section 3.5.5) plans to maintain and maximize public access and enjoyment of recreational areas along the coast. And LUP Policy 1.7.1 requires that all forms of access to recreational areas and destinations be maintained and even enhanced, including vehicular access. Finally, LUP Policy 3.5.3 requires new development, and explicitly public works projects such as this one, to provide public access from the nearest public roadway to the shoreline and along the coast unless it is already adequately provided, or where public safety or coastal resource concerns would demand otherwise.

Analysis

Coastal Act Section 30210 and LUP Policy 3.5 requirements to maximize recreational access opportunities represent a different threshold than to simply provide or protect such opportunities, and are fundamentally different from other like provisions in this respect: it is not enough to simply provide such opportunities to and along the coast, and not enough to simply protect such opportunities; rather such opportunities must also be maximized. These policies provide fundamental direction with respect to projects along the California coast when public access issues are raised, as here where the Appellant makes it a central theme of the appeal. Taken together, these overlapping policies require maximization of public access and recreation opportunities for the public and including explicitly vehicular access opportunities via the LCP.

At the same time, the Coastal Act and the LCP also require that such access not be maximized at all costs, and explicitly require that the public access provisions be implemented in a way that takes into account the “time, place, and manner of public access depending on the facts and circumstances in each case”, including evaluating the capacity of the area in question to sustain use and at what level of intensity, the potential need for “limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses,” and “[t]he need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter” (Section 30214). Similarly, the direction in LUP Policy 1.7 to maximize public access and enjoyment of recreational areas is tempered by the need for such maximizing to be consistent with “sound resource conservation principle[s], safety, and rights of private property owners”. And LUP Policy 3.5.3 similarly refers to the need to evaluate public safety, coastal resources, and the adequacy of nearby access when considering how the otherwise required access is to be provided. Thus, when the Commission considers development that may impact public access, as in this appeal, the Coastal Act and the

LCP require the Commission to analyze the impacts wholistically and not to focus only on maximizing public recreational access opportunities in a vacuum.

As noted above, the Appellant suggests that the City-approved street sweeping project runs afoul of Coastal Act and LCP provisions to maximize public coastal access. They argue that a program that limits parking inherently interferes with the public's access rights, particularly for those who reside in their vehicles and have no other options to access coastal locales, and that enforcement of such a program would ultimately cause severe public access limitations.

In local jurisdictions, parking restrictions are often proposed because of recognized problems with parking related issues. In such cases, it is important that the problem be clearly identified and substantiated, and that the response be as focused as possible to address the problem while avoiding public access impacts as much as possible. In this case, the City evaluated its existing street sweeping program and found identifiable issues in regards to debris accumulation and cleanup that could be addressed by the proposed pilot project. In particular, the City street sweeping program does not currently prohibit parking during the hours of program operation, leading to cars being parked (sometimes for extended periods of time) between the street sweeping vehicle and the curb. When trash and other debris accumulates between the parked vehicle and the curb (and/or under the vehicle), the street sweeper is unable to reach such refuse; in areas where parked cars are parked for longer term periods, such refuse can compound over time and can adversely affect coastal waterways and other sensitive habitats, and ultimately the ocean.

The City identified a select number of streets, both within and outside the coastal zone, with identified higher levels of debris accumulation where increased measures to address such debris accumulation is appropriate. The City-approved project would affect the ability of all vehicles to park on select City streets (see **Exhibit 2**) between the hours of 5am and 7am on alternating sides of the street, two days per week (for example, between 5am and 7am vehicles will be able to park only on the west side of a street on Tuesdays and able to park only the east side of a street on Thursdays).⁵ Further, such a program would be limited to a one-year pilot term to allow for evaluation of the implementation of the program and its effects on reducing refuse levels on these streets. The City worked to avoid any significant coastal access impact by limiting the duration of the parking prohibition (for only two hours per day in the very early morning outside of any peak period visitation times and only twice a week) and the location of the parking prohibition (i.e., on one side of the street only, rather than both sides of the street), such that the majority of public access and recreation opportunities would not be affected, given that most people are asleep during the hours between 5am and 7am and that recreational access users seeking parking at that time need simply park on the other side of the street to access the area during those hours. Thus, the proposed pilot program appropriately balances the City's interest in improving their existing street

⁵ In the Coastal Zone, the streets affected are Delaware Avenue, Natural Bridges Drive, Swanton Boulevard, and Mission Street Extension.

sweeping program while preserving and providing public access. It also should help reduce trash accumulation and avoid coastal resource harm in this regard.

The Appellant disagrees that the programs effect on public access is minimal and points to the compounding effects of this pilot program in conjunction with the City's Oversized Vehicle Program.⁶ They argue that the City-approved pilot program would further displace individuals that reside in their vehicles from the coast, thereby limiting their access to the coast, including because the financial burden when found not in compliance (i.e., parking citations) is not feasible for many.^{7,8}

In response, the Commission agrees that restrictions on public coastal access are not something to be taken lightly, and, in this case, must be considered in the context of other related parking restrictions. The Coastal Act and LCP do speak to maximizing public access, and arguably, restrictions on such access inherently do not do so. That being said, as explained above, the Coastal Act and LCP do not stand for access at all costs, and instead provide for management, and sometimes restrictions, to address issues related to overuse, natural resource protection, and other needs. It is through this review lens that the Commission typically evaluates public access restrictions, including whether such restrictions are narrowly tailored to address the particular impact/goal they seek to address. Here, the City's program meets such tests, as the City's street sweeping pilot program is a basic municipal function meant to clean our public spaces, and is being carried out in a narrowly tailored manner with specific limited hours and locations to avoid any significant coastal access impact. The City's approval allows flexibility for those parking on the affected streets to still park on said streets, albeit on certain sides of the street during certain days. In short, the project should help clean the City's streets without any significant coastal access impairment, and can be found consistent with the Coastal Act and LCP.

For the above reasons, the City's approval of a CDP for the proposed project does not raise a substantial issue of LCP conformance with respect to public access.

2. Environmental Justice

Applicable Coastal Act Provisions

The Coastal Act explicitly identifies the need for equity and environmental justice and allows the Commission to consider coastal resource issues and impacts through that lens in appeal cases, like this, even if the LCP itself may be silent on such issues. The Coastal Act states:

Section 30013. *The Legislature further finds and declares that in order to advance the principles of environmental justice and equality, subdivision (a) of Section 11135 of the Government Code and subdivision (e) of Section 65040.12*

⁶ Authorized by City CDP CP23-0176.

⁷ On this, the City-approved pilot program would issue warnings to any first-time offenders of the street sweeping restrictions, followed by a citation of \$48 for repeat offenders.

⁸ The Appellant points out that street sweeping parking citations are the most commonly issued citations in the State of California.

of the Government Code apply to the commission and all public agencies implementing the provisions of this division. As required by Section 11135 of the Government Code, no person in the State of California, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, shall be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination, under any program or activity that is conducted, operated, or administered pursuant to this division, is funded directly by the state for purposes of this division, or receives any financial assistance from the state pursuant to this division.

Section 30107.3. *(a) “Environmental justice” means the fair treatment and meaningful involvement of people of all races, cultures, and incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. (b) “Environmental justice” includes, but is not limited to, all of the following: (1) The availability of a healthy environment for all people. (2) The deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities. (3) Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision making process. (4) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.*

Section 30604(h). *When acting on a coastal development permit, the issuing agency, or the Commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.*

To implement its Coastal Act environmental justice authority, the Commission adopted an Environmental Justice Policy (“EJ Policy”) to guide and inform its decisions and procedures in a manner that is consistent with the provisions in, and furthers the goals of, Chapter 3 of the Coastal Act and certified LCPs. The EJ Policy further articulates environmental justice concepts, including stating:

The term “environmental justice” is currently understood to include both substantive and procedural rights, meaning that in addition to the equitable distribution of environmental benefits, underserved communities also deserve equitable access to the process where significant environmental and land use decisions are made.

Thus, the Commission’s EJ Policy underscores the importance of both substance (i.e., evaluating whether projects do or do not disproportionately distribute environmental benefits and burdens) and process (i.e., ensuring that those potentially affected by proposed development have an equitable opportunity to participate in a transparent public process).

Analysis

The main point of the Appellant's contentions with the City-approved project is not about public recreational access per se (as discussed in the previous section), but rather about the impacts that the City-approved parking restriction have on unhoused individuals who use vehicles as a place to sleep in overnight. The primary substantive concern identified is that while the 5am to 7am restriction is limited and would apply equally to all persons attempting to park on those streets during those hours, it disproportionately impacts unhoused individuals who sleep at night in their vehicles, and, coupled with the City's Oversized Vehicle Program, further places parking restrictions on unhoused individuals living in oversized vehicles.

Identifying Environmental Justice Communities

The first step in this environmental justice analysis is to determine whether unhoused individuals that use a vehicle as a place to sleep at night constitute an "environmental justice" community to which the Coastal Act's environmental justice provisions and the Commission's EJ Policy apply. If so, the next step is to identify to what extent the City-approved project may adversely and disproportionately affect those individuals. In answering these questions, the Commission's consideration necessarily focuses on how the project's coastal resource impacts may disproportionately affect such individuals compared to others affected by the project.⁹ The Commission is also tasked with ensuring that communities of concern can access the process to make their views known and to help shape the debate on potential local government and Commission decisions.

Based on the evaluation criteria set forth above, the Commission finds that unhoused individuals¹⁰ that use a vehicle as a place to sleep at night are an environmental justice community. The Coastal Act's definition of environmental justice as set forth in Section 30107.3 above commits the Commission to the fair treatment and meaningful involvement of people of all "races, cultures, and incomes ... with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." Unhoused individuals who use a vehicle as a place to sleep at night can generally be classified as a lower income segment of the population that are acutely struggling to attain some of society's most basic needs, such as safe and secure housing, making them particularly vulnerable to outside environmental hazards. And finally, as part of the Commission's EJ Policy development, Commission staff consulted a number of environmental justice experts in California who uniformly advised that, based on the characteristics of this vulnerable population, unhoused individuals who use a vehicle as a place to sleep at night qualify as members of an environmental

⁹ This focus derives from the fact that the Coastal Commission is a coastal management agency charged with the protection and enhancement of the State's coastal resources. Thus, the Commission's review of environmental justice issues is necessarily rooted in its evaluation of coastal resource benefits and burdens, as opposed to non-coastal resource issues, such as broader societal issues associated with public health and general welfare, which are the purview of other government agencies and entities.

¹⁰ According to the U.S. Department of Housing and Urban Development, people experiencing homelessness may have access to shelter or may be considered "unhoused" if their primary nighttime residence is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground. The analysis in this report focuses on unhoused individuals who sleep in vehicles at night.

justice community. Thus, the Commission here finds that such unhoused individuals, in this case those who sleep in vehicles at night, are an environmental justice community of concern to which the Coastal Act's environmental justice provisions and the Commission's EJ Policy apply.¹¹

Potential Environmental Justice Concerns

As discussed above, the Commission's environmental justice analysis is two-pronged, and refers to both potential procedural and substantive concerns. In terms of the former, the City provided an open and inclusive public forum for interested parties to participate. The City conducted two public hearings, including before the City Zoning Administrator and the City Council. The Commission's process has likewise been open and transparent, and Commission staff has maintained open lines of communication with engaged parties, including ultimately in terms of the notice and outreach associated with this report and the Commission hearing scheduled to take place on November 14, 2024. In sum, there have been opportunities for active public participation.

In terms of substantive concerns, the question becomes whether the project would result in disproportionate adverse coastal resource impacts on the unhoused community, here expressed in terms of public access opportunities. The Appellant suggests that this project is meant to intimidate people living in their vehicles, as opposed to mitigating for trash, arguing that parking citations from street sweeping will negatively impact low-income and unhoused individuals living in their vehicles. The City states that street sweeping hours are limited and the program is designed to reduce the burden of infraction, as the first violation is a warning, rather than a citation, while subsequent citations escalate with each violation.¹² At its core, and because environmental justice is a lens that can be applied to coastal resource concerns, and is not a Chapter 3 policy of its own, the Appellant suggests that these types of impacts would be disproportionately felt by individuals who sleep in their vehicles at night, and that this is thus a disproportionate public access burden not felt by others.

As discussed previously in the "Public Access" section of this report, while the Coastal Act requires that public recreational access opportunities be maximized, it also allows for limitations on such opportunities for a variety of reasons. These include providing for public safety, protecting against overuse and coastal resource degradation, limiting intensity of use, and providing management measures to address these issues, among other things. Sections 30210 and 30214 allow for the regulation of the time, place, and manner in implementing Coastal Act public recreational access policies. Put another way, if the City has a reasonable basis for limiting public recreational access during certain hours, such as based on public health, safety, and welfare, this can be found consistent with Coastal Act and LCP public access provisions.

¹¹ Santa Cruz County regularly conducts what is known as a "point-in-time" count of unhoused individuals, the last of which occurred between 4:30am and 10am on January 25, 2024, where 1,850 individuals were identified Countywide, and 659 in the City of Santa Cruz ("Santa Cruz County Homeless Point-In-Time Count & Report 2024", by Applied Survey Research).

¹² The City is developing an escalating citation fee model that begins with a warning for the first violation, second violation is \$48 and caps at \$144 on the fourth and beyond citation.

And as described in the prior findings above, in this case, the overall public access impact is limited, and the parking impacts are mitigated by design (i.e., being able to park on the opposing side of the street during those program hours, as well as on other City streets, during that time). As it applies specifically to oversized vehicles, the City also operates a safe parking program at a number of locations in the City, where oversized vehicles can park until 8am,¹³ and so oversized vehicles that are already not allowed until 5am on these four streets have an alternative safe place to park even when street sweeping may occur. Thus, the Appellant's observation that potential parking citations would lead to disproportionate public access impacts to unhoused individuals who sleep in vehicles at night is belied by the facts that all vehicles – whether used for habitation or not – have available alternatives for parking that avoids citations during the 5am to 7am street sweeping time, including parking across the street, on other streets, or, in the case of oversized vehicles, availing themselves of the City's free safe parking program; and the actual public access impact of street sweeping parking restrictions between 5am and 7am is negligible given the limited nature of such pursuits at that hour. While any parking restriction inherently raises questions regarding consistency with the Coastal Act and LCP requirements to maximize public recreational access, here the City has sought to minimize and mitigate any such impacts by narrowly tailoring the parking restrictions to between the 5am and 7am and by impacting only one side of the street during those hours.

Thus, the Commission believes that this program is an appropriate response to coastal resource issues that have arisen from vehicles parked along the street during street sweeping operations. The City acknowledges that this pilot program is a change from the current status quo and that there may be need for adjustments in the future, including after evaluating the success of the implementation of the new parking restrictions and street sweeping operation. And while the program would add incrementally to the restrictions in the area already subject to the City's Oversized Vehicle Program, the public access impact is minor, given that area users can park on the opposite side of the street, or, if need be, in the Safe Parking Program locations during street sweeping times. In addition, the program hours avoid the times when most coastal access users avail themselves of the free parking in this area.¹⁴ In this instance, the City-approved pilot program is meant to improve an existing street sweeping program that is intended to avoid accumulation of debris and refuse into waterways (and thus avoid impacts to water quality) while the Oversized Vehicle program is meant to address public safety, public health, and coastal resource issues that arise from long-term parking of oversized vehicles for habitation on public streets that are not equipped for such uses. And again, all users (whether in regular vehicles or oversized vehicles) may still park along the affected streets from 5am to 7am for five days a week, and may

¹³ The City operates an Oversized Vehicle Program that prohibits parking of oversized vehicles on City streets between midnight and 5am, and that provides free overnight safe parking locations with various services in the City for overnight vehicles (see City CDP CP23-0176). Such oversized vehicles, which are often used for habitation, can safely park overnight in the safe parking locations either temporarily or longer-term, where such vehicles can park in these areas until 8am.

¹⁴ Notably, this area is adjacent to the University of California Santa Cruz Coastal Science Campus. The City notes that the majority of students, staff, and faculty, get to campus at 8am or later and thus the restrictions would avoid these hours.

still park along the non-street sweeping side of the street from 5am to 7am during the other two street sweeping days.

Conclusion

In conclusion, while the Commission takes its environmental justice authorities seriously, including through 'access for all' requirements, the City's street sweeping program here is a very minor and straightforward program to ensure clean public spaces and is undertaken in a manner that will not have a significant impact on public coastal access, and provides feasible alternatives in instances where there may be. Additionally, given the proposed program will be temporary, the City has the opportunity to address any coastal access impacts for these populations in one year with supplementary data and public feedback for this pilot project. It does not raise any substantial LCP conformance issues.

3. Water Quality

The LCP broadly protects water quality, including meeting or exceeding the State Water Resources Control Board requirements for discharge into sewage and storm drain systems; protections to ensure that adjacent surface water quality is not degraded by new development; continuing increased storm drainage system cleaning during the fall rainy season and exploring increasing the capacity of street sweeping operations; and evaluating water quality in existing waterways:

LUP Environmental Quality Policy 2.1. Meet or exceed State Water Resources Control Board standards for discharge of sewage and storm waters to the Monterey Bay.

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

LUP Environmental Quality Policy 2.3.1.8. Continue annual fall cleaning of the underground storm drainage system and investigate the feasibility of increasing street sweeping intervals.

LUP Environmental Quality Policy 2.4. Evaluate the water quality of natural springs and streams in the City and devise strategies to protect and restore these areas.

Analysis

The Appellant contends that there is not an adequate basis for the City to find that the streets identified for the pilot street sweeping program have elevated trash levels and, therefore, that the parking restrictions will actually improve marine water quality. The Appellant argues that the streets identified for the pilot program actually do not have elevated trash levels, and that the existing street sweeping program is sufficient to remove debris and refuse without imposing parking restrictions. Lastly, the Appellant points out that there are other ways to address street cleaning issues, such as more

trash and recycling receptacles, and expansion of existing community cleanup programs.¹⁵

The LCP requires the City to meet or exceed State Water Resources Control Board Clean Water Act requirements to ensure that the City sewer and storm drainage systems do not impact water quality in Monterey Bay. The City notes that discharges from urban runoff are regulated by the 1972 Clean Water Act through the National Pollutant Discharge Elimination System (NPDES) permit program; this program, in part, regulates municipal street-sweeping operations. The City, also through this program, evaluates the volume of debris remaining uncollected on City streets even when regular street sweeping operations are in use. The City notes that while most streets have been characterized as having “low” trash levels, certain streets (such as those identified as a part of this pilot program) have been characterized as having “moderate” trash levels. The City’s NPDES permit requires that the City enhance the cleanliness of City streets, ideally bringing all “moderate” trash levels to “low” levels to avoid the migration of trash into Monterey Bay.

Further, the LCP specifically speaks to cleaning storm drainage systems during the fall rainy season and potentially increasing street sweeping operations to ensure urban runoff does not degrade water quality. Here, the City-approved project would occur during times when the existing street sweeping program already operates, but would allow the street sweeping vehicle to access debris that accumulates between parked cars and the curb, something that the current program is not capable of doing due to the presence of parked cars. Arguably, although no data currently exists on the amount of trash removed via regular street sweeping operations vs. the City-approved version here, such changes would invariably be expected to improve water quality in coastal areas. Further, the intent of the one-year pilot project is to evaluate the effectiveness of such a program, including by collecting such data.

In sum, the City-approved pilot program is consistent with the directives of the LCP to improve water quality in coastal areas. Such a program is one tool in the City’s collective toolbox to address issues related to trash and debris accumulation along City streets, and, coupled with other tools such as community clean up programs and regular trash/recycling programs, works to improve street cleanliness. Accordingly, the City appropriately followed the LCP to explore expanding their street sweeping operations, including in a way that allows for evaluation of the program after one year.

For the above reasons, the City’s approval of a CDP for the project does not raise a substantial issue of LCP conformance with respect to water quality.

4. Conclusion

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity or Coastal Act public access

¹⁵ The Appellant points specifically to the Downtown Streets Team, a non-profit group which build teams composed of unhoused and at-risk individuals who received access to case management, system navigation, and employment placement services in exchange for engaging in community beautification and clean-up projects within the downtown area of Santa Cruz.

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 such a substantial issue (and, as indicated previously, is not tasked with making Coastal Act or LCP consistency findings). Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue: the degree of factual and legal support for the local government's decision; the extent and scope of the development approved by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well. In this case, these five factors, considered together, support a conclusion that this project does not raise a substantial issue.

With respect to the degree of factual and legal support for the City's decision, the City evaluated the existing street sweeping program and identified a coastal resource need for the modifications approved as a part of the pilot project, and has taken steps to limit the impacts of the program on coastal public access. As there is adequate factual and legal support for the project's consistency with the LCP and Coastal Act, the first factor weighs in favor of a finding of no substantial issue.

As to the scope of the approved development, it is actually quite limited. It only applies to vehicles parked on one side of the street on Delaware Avenue, Natural Bridges Drive, Swanton Boulevard, and Mission Street Extension between the hours of 5am and 7am twice a week, which is not a time of significant public access pursuits in the City of Santa Cruz, and still allows for coastal access users to park in that area during those times. Thus, the second factor weighs towards no substantial issue as well.

In terms of the significance of the coastal resources affected by the City's decision, public access and recreation, and water quality on the coast are paramount concerns of both the Coastal Act and LCP. However, for the reasons explained above, the pilot program will have minimal impacts on public access and is intended to improve water quality by allowing street sweeping operations to reach debris accumulated between parked cars and the curb, all of which argues for no substantial issue.

Regarding the precedential value of the City's decision for future interpretations of its LCP, it should first be noted that any one case, like this one, is decided on its specific facts and its specific merits, and is not entirely dispositive as to how subsequent CDP decisions will be made. At the same time, there is always the potential that the City and/or other parties interested in the issues raised here might see the City's action here as precedential in some way, despite each case being considered based on its own facts and context. In that context, the City did not stake out unusual or potentially problematic precedential positions in its action. This factor supports a no substantial issue finding.

Finally, while it is clear that issues related to public access and water quality are key statewide coastal resource issues, and while it is also clear that the plight of unhoused

individuals who sleep in their cars at night are important societal issues facing not only this City, but other cities, as well as the state and nation as a whole, the reality is also that the City's street sweeping program is also a fairly typical municipal function that here has been rather narrowly crafted in such a way as to limit any adverse impacts. As such, while the project involves matters of regional and statewide significance, the issues raised are actually quite limited, and this factor also weighs in favor of no substantial issue.

It is also important to note that while the five factors listed in Section 13115(c) of the Commission regulations are important and used frequently by the Commission, they are not an exhaustive list, and the Commission is not "limited" to using those factors. On the contrary, and as stated above, the Commission may use the five factors – and any weighting between them that it deems appropriate – but also may make a substantial issue determination for other reasons as well.

Taken together, and for the reasons stated above, the Commission finds that Appeal Number A-3-STC-24-0044 does not raise a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and declines to take jurisdiction over the CDP application in this case.

3. APPENDICES

A. Substantive File Documents¹⁶

- Commission CDP Files for A-3-STC-22-0018 (Nighttime Oversized Vehicle Parking Restrictions) and A-3-STC-24-0012 (Oversized Vehicle Ordinance).

B. Staff Contacts with Agencies and Groups

- City of Santa Cruz Public Works Department
- Santa Cruz Cares

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