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STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number: A-2-SNF-24-0009

Applicant: San Francisco Recreation and Parks Department

Appellants: Sunset-Parkside Education and Action Committee ("SPEAK"); Charles Perkins

Local Government: City and County of San Francisco

Local Decision: Coastal Zone Permit 2022-007356CTZ approved with conditions on March 13, 2024, when the City and County of San Francisco Board of Appeals denied an appeal of the City and County of San Francisco Planning Commission's prior permit approval (on November 9, 2023)

Project Location: Upper Great Highway between Sloat Boulevard and Lincoln Way, plus surrounding streets, just inland of Ocean Beach on the western side of the City and County of San Francisco

Project Description: After-the-fact and prospective authorization of a temporary pilot project (through December 31, 2025) to close the Upper Great Highway between Lincoln Way and Sloat Boulevard to vehicular traffic on weekends and holidays to allow the space to be used for non-vehicular public recreational access at those times, and to install traffic calming measures on neighboring streets

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, Appellant, 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 and County of San Francisco (also referred to as "San Francisco", or "City of San Francisco", or "City" in this report) approved a CDP (identified locally as a coastal zone permit) to close a portion of the Upper Great Highway (i.e., that portion of the Great Highway 'system' located seaward of the Lower Great Highway) between Lincoln Way and Sloat Boulevard to vehicular traffic on weekends and holidays (to facilitate increased car-free bicycle and pedestrian access and use in that space at those times), and to add traffic calming measures in nearby inland neighborhoods (e.g., stops signs, speed cushions, turn restrictions, etc.). Because the City implemented the part-time vehicular restriction without a CDP starting in August 2021, the approval authorizes that past part-time closure,¹ and the approval also continues that closure until December 31, 2025, where the intent is for 'lessons learned' from such part-time closure to be used to help inform a longer-term plan for the future of this public space.

The Appellants contend that the City's approval raises Local Coastal Program (LCP) conformance issues primarily related to public access, coastal dunes, and neighborhood compatibility. The appeals primarily and specifically contend that the approved project does not maximize public access, that non-vehicular use of the road during vehicle closure times inappropriately impacts sensitive dune habitats, and that the surrounding neighborhoods are not sufficiently protected from re-rerouted vehicular traffic.

Regarding public access contentions, the project provides improved access along this section of the Upper Great Highway for pedestrians, bicyclists, and other non-vehicular users (e.g., persons in wheelchairs, families with baby strollers, etc.) on weekends and holidays, and distributes vehicular traffic during the same times to the Lower Great Highway. Put another way, the Great Highway system (i.e., both Upper and Lower Great Highways) would continue to accommodate all public access users along this stretch of coast with project implementation, and does not appear to run afoul of LCP or

¹ Staff notes that this closure has been tracked by the Commission as a violation, where the intended outcome of the appealed San Francisco decision is to resolve such violation going forward. If the Commission finds no substantial issue, then that will be the case. If the Commission should find that there is a substantial issue here and thus take jurisdiction over the CDP application, then the violation would remain, and would need to be addressed either through that CDP application or through separate enforcement means.

Coastal Act requirements to maximize public access in this regard.

With respect to dune contentions, it is not clear that the approved project is the reason for the dune impacts identified by the Appellants. Rather, the dunes at Ocean Beach have been under stress for decades, due to both natural and anthropogenic impacts. While it is true that the dunes could be better cared for in this regard (e.g., restoration and enhancement, closing volunteer trails, rope and pole protection barriers, informational signage, trash/recycling, etc.), that is true regardless of this project. What's more, both the National Park Service and the City and County of San Francisco are actively working on measures to better protect and improve these dune areas, which are independent from this project.

As to neighborhood compatibility contentions, it is true that vehicular traffic that would normally use this two-mile section of the Upper Great Highway during weekend/holiday closure times would likely shift to the parallel two-mile segment of the Lower Great Highway, but the closure is not so much increasing vehicular use as it is simply redistributing it within the Great Highway system overall. As to related effects claimed by Appellants (decreased pedestrian safety and available parking, less safe and convenient conditions for low- and moderate-income residents; more difficult access to commercial areas; increased delays in first responder time, etc.), there does not appear to be any clear evidence in the record to illustrate that such impacts are happening, nor that they would raise significant LCP issues. In addition, the project includes the installation of a variety of traffic calming measures in and around the project area and surrounding neighborhoods (including but not limited to additional stop signs, speed cushions, and turn restrictions) aimed at making this area more resilient to potential traffic issues – whether any alleged traffic issues are attributable to this project or not (and where a study by the San Francisco Municipal Transportation Agency suggests that traffic in the area is actually below pre-pandemic traffic levels during the part-time closure on Fridays).

In short, staff believes that the City of San Francisco's approval of the project represents a temporary repurposing of a portion of a coastal roadway for non-vehicular uses on weekends and holidays, which all told appears to be a public recreational access improvement, and certainly not an action that raises a substantial LCP or Coastal Act conformance issue. Thus, staff recommends that the Commission find that **no substantial issue** exists, and that the Commission decline to take jurisdiction over the CDP application for this project. The single motion and resolution to do so is found on page 5 below.

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Site Area Photos

Exhibit 3 – City and County of San Francisco-Approved Project Plans

Exhibit 4 – City and County of San Francisco Final Local CDP Action Notice

Exhibit 5 – Appeals of City and County of San Francisco CDP Action

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 would stand and would thus be final and effective. To implement this recommendation, staff recommends a **yes** vote on the following motion which, if passed, will result in a finding of no substantial issue and adoption of the following resolution and findings. Failure of this motion will result in a substantial issue finding, whereby the Commission would take jurisdiction over the underlying CDP application, and a future de novo hearing on such application. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission determine that Appeal Number A-2-SNF-24-0009 raises **no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a **yes** vote.*

Resolution for No Substantial Issue: *The Commission hereby finds that Appeal Number A-2-SNF-24-0009 presents no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified City and County of San Francisco Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

2. FINDINGS AND DECLARATIONS

A. Project Description

The City-approved project is located along the Great Highway corridor fronting Ocean Beach at the City of San Francisco's western edge, just seaward of the City's Richmond and Sunset residential areas. A version of the Great Highway has existed along Ocean Beach at this location, between upcoast 'Land's End' (and the entrance to the San Francisco Bay, and the Golden Gate Bridge further upcoast and inland) and downcoast Fort Funston since the 1920s, where the most recent substantial redevelopment of the road occurred in the late 1970s and early 1980s. What is commonly referred to as the Upper Great Highway extends along that entire almost four-mile length closest to the beach, with four traffic lanes (two in each direction) and a parallel recreational trail. In addition, what is commonly referred to as the Lower Great Highway extends some two miles between Lincoln Way and Sloat Boulevard, where that road is two traffic lanes (one in each direction) and located just inland of the Upper Great Highway which, within the same two-mile stretch, does not connect with the streets perpendicular to the shoreline, and instead they end at the Lower Great Highway.

The City closed the Upper Great Highway between Lincoln Way and Sloat Boulevard starting April 2020 during the City's COVID-19 shelter in place, and then only on

weekends and holidays starting in August 2021,² without the benefit of a CDP.³ The City and County now want to recognize that closure after-the fact, and to extend it until December 31, 2025. The stated goal for the project is to establish a “car-free bicycle and pedestrian promenade” to increase public access and active recreation along the Great Highway corridor during weekends and holidays. The project also includes implementation of various “traffic calming” measures on surrounding streets (including additional stop signs, speed cushions/tables, and turning restrictions) designed to improve bicyclist and pedestrian safety.

See **Exhibit 1** for a location map, **Exhibit 2** for photographs of the site and surrounding area, and **Exhibit 3** for the City-approved project plans.

B. City and County of San Francisco CDP Approval

On December 6, 2022, San Francisco’s Board of Supervisors passed an ordinance that amended their non-LCP Park Code to prohibit vehicles on the Upper Great Highway between Lincoln Way and Sloat Boulevard on weekends and holidays until December 31, 2025 (Board File 220875). The restriction was identified as a pilot effort, designed to include studies and analyses of the part-time, car-free use of this portion of the Upper Great Highway to help inform a longer-term plan for the future of this public space, including the potential for establishing a vehicle-free condition, available for pedestrian and bicyclist recreation purposes.

San Francisco’s Planning Commission subsequently approved a CDP (referred to locally as a coastal zone permit) on November 9, 2023 for the above-described project. That CDP decision was appealed (by Sunset-Parkside Education and Action Committee (“SPEAK”), Charles Perkins, and Geoffrey Moore; the first two of which are the appellants to the Commission for this matter) to the City’s Board of Appeals, which denied the appeals on February 7, 2024, and denied requests by each of the three appellants for a rehearing on March 13, 2024.

The Coastal Commission’s North Central Coast District Office received notice of the City’s final CDP decision on March 19, 2024 (see **Exhibit 4**), and the Coastal Commission’s ten-working day appeal period for this action began on March 20, 2024, and concluded at 5 PM on April 3, 2024. The Commission received two valid appeals (discussed below and shown in **Exhibit 5**) 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

² The City of San Francisco closed the Upper Great Highway full-time during the COVID-19 pandemic from April 2020 to August 2021. Although the Commission’s Executive Director authorized similar closures of public spaces on a temporary basis as part of the Commission’s COVID-19 response pursuant to Coastal Act Section 30611, the City did not request and the Executive Director did not grant such authorization in this case.

³ The Commission’s Enforcement Unit has been tracking that violation; see Violation section below.

inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under 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 of San Francisco CDP decision is appealable because it is located between the sea and the first public road paralleling the sea,⁴ and it is located within 300 feet of the beach.

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

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal and address at least the substantial issue question within 49 working days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline for Commission action. The Applicant has not waived the 49-day hearing requirement in this case.

The Coastal Act and the Commission's implementing regulations are structured such that a substantial issue is presumed when the Commission acts on this question unless the Commission finds that an appeal does not raise a substantial issue, and the Commission considers a number of factors in making that determination.⁵ At this stage,

⁴ The Great Highway is the first public road in this area, and the appealable area associated with it under Section 30603 is the inland extent of its right-of-way (pursuant to California Code of Regulations Section 13577).

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

the Commission may only consider contentions raised 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 full hearing is requested, a substantial issue is automatically found. If the Commission does take testimony at this first phase, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, Appellant, 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, if applicable, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances the Coastal Act's public access and recreation provisions). This step is often referred to as the "de novo" review phase of an appeal, and it entails reviewing the proposed project in total. There is no legal deadline for the Commission to act on the de novo phase of an appeal. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing (if applicable).

D. Summary of Appeal Contentions

The Appellants contend that San Francisco's approval raises LCP conformance issues primarily related to public access, coastal dunes, and neighborhood compatibility. The appeals primarily and specifically contend that the City-approved project: does not maximize public access, including explicitly for people who are elderly and/or disabled; does not adequately provide for "slow pleasure traffic" nor protect the Upper Great Highway for vehicles; degrades adjacent dune areas from increased public use, including adversely affecting snowy plover habitat; and does not sufficiently protect surrounding areas from project traffic impacts. See **Exhibit 5** for the full appeal documents.

E. Standard of Review

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

F. Substantial Issue Determination

1. Public Recreational Access

Applicable Coastal Act and LCP Provisions

Maximizing public recreational access opportunities is a fundamental objective of the Coastal Act, which also protects against impacts to existing such access. Relevant provisions include:

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

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

Section 30212(a). *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. ...*

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

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

Section 30221. *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Further, Coastal Act Section 30240(b) protects parks and recreation areas, such as the adjacent beach, while Section 30252 speaks to more broadly protecting and enhancing public access as it relates to circulation, stating:

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

30252. *The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of*

transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

The LCP echoes these Coastal Act provisions, where the Great Highway and Ocean Beach are two of the ten issue areas identified in the LUP, where the LUP identifies an objective for each area, followed by individual policies intended to help reach that objective. The two applicable objectives for the Great Highway and Ocean Beach are:

LUP Objective 2. *Redesign the Great Highway to enhance its scenic qualities and recreational use.*

LUP Objective 6. *Maintain and enhance the recreational use of San Francisco's Ocean Beach shoreline.*

These two objectives are implemented by multiple policies, where the applicable Great Highway and Ocean Beach policies include:

LUP Policy 2.1. *Develop the entire Great Highway right-of-way into a smooth recreational drive through a park area. Emphasize slow pleasure traffic and safe pedestrian access to beach.*

LUP Policy 2.7. *Locate parking for users of Ocean Beach and other coastal recreational areas so that the Great Highway need not be crossed. Provide limited parking east of the highway for park use. Design parking to afford maximum protection to the dune ecosystem.*

LUP Policy 2.8. *Provide permanent parking for normal use required by beach users in the Great Highway corridor (taking into account the increased accessibility by transit); provide multiple use areas which could be used for parking at peak times, but could be used for recreational uses when not needed for parking.*

LUP Policy 2.9. *Improve pedestrian safety by providing clearly marked crossings and installing signalization.*

LUP Policy 6.1. *Continue Ocean Beach as a natural beach area for public recreation.*

LUP Policy 6.5. *Enhance the enjoyment of visitors to Ocean Beach by providing convenient visitor-oriented services, including take-out food facilities.*

Analysis

Both the Coastal Act and the LCP require that public recreational access opportunities be protected and maximized. Specifically, the Coastal Act requires maximum public access and recreational opportunities be provided for all people, and that lower cost visitor and recreational facilities be protected, provided, and prioritized. Further, development adjacent to parks and recreation areas is required to be sited and designed to prevent degradation of those areas. As to the LCP, the identified LUP objective for the Great Highway is to foster changes to it that enhance its scenic qualities and its recreational utility, while the objective for Ocean Beach is to maintain and enhance recreational use of this area.

The appeals contend that the project does not maximize public access, including for elderly and disabled people who access this specific part of the coast by driving along the Upper Great Highway, and does not adequately provide for “slow pleasure traffic.” In terms of maximizing public access, the project provides improved public access along the Upper Great Highway for pedestrians, bicyclists, and other non-vehicular users (e.g., persons in wheelchairs, families with baby strollers, etc.) on weekends and holidays, and distributes vehicular traffic during the same times to the Lower Great Highway. In other words, those who only access this part of the coast via automobile will still be able to do so on the weekdays and non-holidays, and will still be able to do so on weekend and holidays, where the latter is via the Lower Great Highway and not the Upper Great Highway. While it is true that the view of the coast is better from the Upper Great Highway, and these vehicular users would not have this view during weekend and holidays from this two-mile stretch of the road, they would continue to always have that view from the other roughly two miles of Upper Great Highway that would not be affected by this project. In addition, there are also free beach parking lots on the seaward side of that area that also continue to provide easily accessed beach and ocean views for those who prefer to take them in from the comfort of their vehicle. Put another way, the Great Highway system (i.e., both Upper and Lower Great Highways) would continue to accommodate all public access users along this stretch of coast and does not appear to run afoul of LCP or Coastal Act requirements to maximize public recreational access in this regard.

In terms of the contention that the project does not adequately provide for “slow pleasure traffic” (per LUP Policy 2.1),⁶ three things are noted. First, importantly, the LCP does not distinguish between the Upper and Lower Great Highways, and LCP provisions simply refer to the Great Highway, or the “entire Great Highway right-of-way”, or the “Great Highway corridor”. As a result, the LCP references are not specifically to individual components of the Great Highway (e.g., Upper versus Lower Great Highways), but to the entire Great Highway system. As such, when considering projects like this, LCP provisions have to be understood as applying overall to that system, of which Upper and Lower Great Highways are both a part. Second, the fact that the project would continue to always provide vehicular traffic to that system, including via

⁶ Note that both appeals incorrectly cite to San Francisco General Plan Policy 2.1, and not to LUP Policy 2.1. The policies are similar, but not the same (including where the General Plan mentions a “four-lane highway,” but the certified LUP version does not). To be clear, General Plan Policy 2.1 is not a standard of review for the City’s CDP nor this appeal.

the Lower Great Highway during weekends and holidays, including emphasizing slower traffic via the traffic calming measures part of the project, means that the project is not inconsistent with the 'slow traffic' provisions of LUP Policy 2.1. In addition, even if that policy applied only to the Upper Great Highway, which it does not, the requirement to "emphasize" slower traffic along this stretch is not the same as a requirement to require only that type of vehicular use. In short, the LCP only requires such slow traffic to be emphasized. To the extent having the road open to vehicular use does that, vehicular access will still be provided during non-holiday weekdays pursuant to the project, thus satisfying the policy even if understood in isolation (which is not actually how the LCP works). That means that such 'slow traffic' is still provided – even if just looking at this section of the Upper Great Highway alone – the majority of the time in this two-mile stretch, and all of the time in the other two miles of the Great Highway. Third, LUP Policy 2.1 speaks also to emphasizing "safe pedestrian access to the beach", which the project's approved non-vehicular days accomplish by providing a two-mile stretch of four road lanes where pedestrians are not encumbered by vehicles, which inherently provides safer pedestrian beach access in these locations than when vehicles are present. Therefore, this appeal contention does not raise a substantial issue.

Additionally, the appeals suggest that LUP Policies 2.7 and 2.9 stand for the premise that the Great Highway is meant to only be used for vehicular traffic. However, that is not what these policies say or require at all. In fact, these policies strive to enhance pedestrian safety and beach access associated with the Great Highway corridor through marked crossings and signalization, as well as locating parking so that the Great Highway need not be crossed. In fact, the City has achieved the former as there are signalized and/or marked crosswalks at many points along the Great Highway corridor. As to the latter, a project that eliminates traffic along two miles of the Upper Great Highway during weekends and holidays only further helps avoid pedestrians needing to navigate traffic in getting to the beach in that area. Put another way, safer crossings will be supported by the approved project, which will temporarily remove vehicular traffic from this stretch of the Upper Great Highway, making accessing the beach amenities seaward of the closed roadway segment much safer. These contentions too do not raise substantial issues.

The appeals also argue that increased use in this portion of the Great Highway corridor for bicyclist and pedestrian access, instead of vehicular access on weekends and holidays, has resulted in, and will worsen, public access parking constraints in the area. However, this project does not and will not directly impact parking nor does it involve the addition or removal of any parking spaces (because parking is not currently available in the temporary closure area, nor was it available prior to the project). As to the temporary closure's potential to bring in more public access users when vehicles are not present, where at least some of such users may need a parking space, this may be true (and is a boon to public access opportunities more generally, as well as satisfying Coastal Act and LCP goals to maximize public recreational access), especially as such a feature becomes more widely known. At the same time, parking in this area can be constrained with or without this project, and it is not clear that the project would somehow significantly change such a context. This contention does not raise a substantial issue.

Lastly, the appeals assert that the project interferes with “the public’s right of access to the sea where acquired through use” where such interference is not allowed by Coastal Act Section 30211. However, the project is best seen as shifting to different types of access during weekends and holidays on a portion of the Upper Great Highway. It is not a project that somehow blocks or even significantly adversely affects existing public access, including for the reasons articulated above. In fact, as indicated, the project provides improves access along the Upper Great Highway for pedestrians, bicyclists, and other non-vehicular users on weekends and holidays, and distributes vehicular traffic during the same times to the Lower Great Highway. Further, the Great Highway system continues to accommodate all public access users along this stretch of coast and to Ocean Beach, including through a variety of accessways and via many modalities, regardless of a portion of the Upper Great Highway being closed to vehicles for a few days a week. In fact, the project provides expanded public recreational access to these accessways and will more safely provide improved pedestrian and bicycle access to these areas by removing vehicular traffic during the part-time closures. For that reason, this also does not raise a substantial issue.

In summary, the City-approved project provides improved access along the two-mile stretch of the Upper Great Highway for pedestrians, bicyclists, and other non-vehicular users (e.g., persons in wheelchairs, families with baby strollers, etc.) on weekends and holidays, while providing vehicular access in this two-mile area during the week and providing through vehicular access at all times via the Lower Great Highway along the just inland two miles of road at that time. In fact, it appears fairly clear that the LUP’s public recreational access objectives as they apply to this space – perhaps the key for measuring such access consistency for any project under the LCP -- essentially describe the project that was approved here, because the project would arguably “redesign the Great Highway to enhance its scenic qualities and recreational use” (LUP Objective 2), and would “maintain and enhance the recreational use of San Francisco’s Ocean Beach shoreline” (LUP Objective 6). Simply put, the appeal contentions appear misplaced, and, for all the reasons identified above, the City’s CDP action does not raise a substantial public recreational access issue.

2. Coastal Dunes

Applicable LCP Provisions

The LCP includes a number of provisions that speak to dune protection along Ocean Beach, subject to LUP Objectives 2 and 6 (previously cited and not re-cited here), as well as LUP Objective 12, which states:

LUP Objective 12. *Preserve, enhance, and restore the Ocean Beach shoreline while protecting public access, scenic quality, natural resources, critical public infrastructure, and existing development from coastal hazards.*

These three objectives are implemented by a handful of LUP policies, including:

LUP Policy 2.7. *... Design parking to afford maximum protection to the dune ecosystem.*

LUP Policy 6.2. *Improve and stabilize the sand dunes where necessary with natural materials to control erosion.*

LUP Policy 6.3. *Keep the natural appearance of the beach and maximize its usefulness by maintaining the beach in a state free of litter and debris.*

LUP Policy 12.4. *Develop the shoreline in a responsible manner.*

Analysis

Taken together, the LCP calls for the Ocean Beach shoreline to be preserved, enhanced, restored, and developed “in a responsible manner,” and speaks specifically to dune protection in terms of erosion control and avoiding litter and debris.

The appeals contend that the closure of a portion of the Upper Great Highway during weekends and holidays increases use and foot traffic in that area during that time, thereby increasing use and foot traffic on Ocean Beach, and thereby leading to impacts (from trampling, litter, etc.) to the coastal dunes that front the seaward portion of the Upper Great Highway at this location, including as it relates to snowy plover habitat. As evidence, the appeals cite the following two sentences excerpted from the San Francisco Estuary Institute’s “*Growing Resilience: Recommendations for Dune Management at North Ocean Beach*” December 2023 report:

Ocean Beach faces escalating dune erosion, primarily due to human-induced factors like informal trails causing trampling, leading to blowouts and destabilization of protective vegetation. ... The recent closures of the Great Highway to car traffic (started in 2020 during the COVID-19 pandemic) have led to less constrained use by pedestrians, and increased trampling of dune vegetation has been observed.

What the appeals do not mention is that the same report actually indicates that such impacts date back to at least the 1990s, well before the inception of the proposed limited and temporary vehicular closure authorized by this project for a portion of the Great Highway corridor. Such ongoing impacts to the dunes have spurred research and more recent efforts to buck this trend and address the longstanding and ongoing adverse impacts. In fact, the report identifies management goals and objectives to protect and enhance the dune system, without suggesting reduced public access as a solution. Instead, the report suggests that a better and more realistic solution for reducing trampling is to create more clearly defined access points to the trails and to increase protections for existing dune habitats as well as new plantings. Put another way, it is not clear that the approved project is the reason for the dune impacts identified. Rather, the dunes at Ocean Beach have been under stress for decades, due to both natural and anthropogenic impacts. While it is true that the dunes could be better cared for in this regard (e.g., restoration and enhancement, closing volunteer trails, rope and pole protection barriers, informational signage, trash/recycling, etc.), that is true regardless of this project. In fact, both the National Parks Service and the City of San Francisco are actively working on measures to better protect and improve these dune areas, which are independent from this project. For all these reasons, these appeal contentions do not raise substantial issues.

In fact, the appeals are a bit tangential in this regard, and attempt to read more into the LCP's requirements and the effect of this project on dunes than appear to actually be the case. For example, the appeals contend that the project approval does not conform to LUP Policy 6.2 because it does not protect the dunes from increased trampling. However, LUP Policy 6.2 actually speaks to dune improvement/stabilization through erosion control and does not focus on trampling concerns. Further, the appeals assert that the project fails to conform to LUP Policy 12.3, indicating that it states that "sand shall not be removed from stable dunes." However, LUP Policy 12.3 says that specifically in the context of beach nourishment projects, and not projects like this one.⁷ Similarly, the appeals assert that LUP Policy 2.7 affords "maximum protection to the dune ecosystem", but this policy actually only says as much when applied to designing parking, and not generally.

Generally speaking, the appeals appear to try to connect the project to all of the current dune degradation problems associated with Ocean Beach without recognizing that the underlying causes for impacts to dunes date back decades, and are unrelated to this project in that regard. For example, there is no denying that the LCP identifies the need to maintain the beach free of litter and debris (LUP Policy 6.3), but the appeal assertions that litter has worsened because of the project appear to be only conjecture. In fact, trash is currently collected every day throughout the project area and the beach, and the City indicates that new recycling receptacles have recently been added at each of the Upper Great Highway intersections with marked crosswalks, and that the frequency of collection services has been increased to address the volume of waste associated with the fact that Ocean Beach is a prime visitor destination, whether this project were to occur or not.

In sum, while the appeals raise points about the unintended impacts to dunes from the project, the project scope is fairly limited in this regard, and there does not appear to be the kind of clear 'cause and effect' argued by the appeals. Again, while it is true that the dunes have been under some duress for decades and could be better cared for in this regard, these impacts are not a result of this project. Again, in many ways the appeal contentions appear misplaced, and, for all the reasons identified above, the City's action does not raise a substantial dune protection issue.

3. Neighborhood Compatibility

Applicable LCP Provisions

The LCP also speaks to neighborhood compatibility, and the appeals make several contentions related to how the project could affect inland neighborhoods. For example, the appeals claim that the project approval does not sufficiently protect surrounding areas from the impacts of traffic and parking constraints, that the project negatively impacts the scale of development in this area, and is a poor LCP precedent. The appeals cite:

⁷ LUP Policy 12.3 actually states: "Develop and implement a beach nourishment program to sustain Ocean Beach."

LUP Objective 11. *Preserve the scale of residential and commercial development along the Coastal Zone area.*

LUP Policy 11.3. *Continue the enforcement of citywide housing policies, ordinances and standards regarding the provision of safe and convenient housing to residents of all income levels, especially low-and moderate-income people.*

LUP Policy 11.6. *Protect the neighborhood environment of the Richmond and Sunset residential areas from the traffic and visitor impacts from the public using adjacent recreation and open space areas.*

IP Objective 8. *Maintain and strengthen viable neighborhood commercial areas easily accessible to city residents.*

Analysis

The appeals contend that the weekend and holiday closure of this portion of the Upper Great Highway to vehicles has, and will continue to, increase traffic and decrease pedestrian safety and available parking in nearby neighborhoods. They also claim that such project-related effects have and will: cause unsafe and less convenient conditions for low- and moderate-income housing in the area; make neighborhood commercial areas within the coastal zone more difficult for city residents to access; and cause delays in first responder time. To be clear, however, there does not appear to be any clear evidence in the record to illustrate that such impacts are actually happening, or would happen as the project continues. In addition, the project includes the installation of a variety of traffic calming measures in and around the project area and surrounding neighborhoods (including but not limited to additional stop signs, speed cushions, and turn restrictions) aimed at making this area more resilient to potential traffic issues – whether any are attributable to this project or not.⁸ In addition the fact that the Lower Great Highway is still open comports with Policy 11.6 by limiting the traffic impacts from the closure to these more inland residential areas (i.e., all of which are located inland of the Lower Great Highway at this location).

As to the claims of the project being out of scale for the surrounding neighborhoods, the project does not actually include many structural elements (aside from signs, and traffic calming measures), so it is altogether unclear how its scale could be incompatible with the nearby neighborhoods. Further, to the claim that the City's approval somehow sets a precedent that will be used to argue for year-round closure of the affected road segment, any such future project would be measured against the LCP, just like this one, and it would only be approved if found LCP-consistent based on the facts and the law as applied to that case, and not based on this approval somehow preordaining it. As to the contention that approval of this project will somehow lead San Francisco to approve

⁸ For example, the aforementioned 2022 San Francisco Municipal Transportation Agency study found that vehicle traffic on the Lower Great Highway and on Sunset Boulevard (a popular road about 10 blocks inland from the Great Highway) was below pre-pandemic traffic levels during the Upper Great Highway closure on Fridays (see <https://www.sfmta.com/projects/great-highway-and-outer-sunset-traffic-management-project>).

increased density of residential and commercial development in the coastal zone, there appears to be no connection whatsoever between this project and any potential future density increases that might be considered, nor is increased density somehow forbidden by the LCP. Therefore, these neighborhood compatibility contentions also do not raise a substantial issue.

4. Other

The appeals also raise a number of other contentions, such as asserting that greenhouse gas emissions (GHGs) and vehicle miles traveled (VMTs) would increase because of the project. However, there does not appear to be any evidence to support these claims (and, in fact, the aforementioned 2022 SFMTA traffic study suggests traffic has actually decreased, as described above). Further, these issues (GHGs and VMTs) are not actually regulated by San Francisco's certified LCP.⁹ Both appeals also contend that the temporary, partial closure of the Upper Great Highway has a significant impact on access for emergency vehicles. However, such a contention ignores the fact that the closure is part-time, during weekends and holidays, and would have exactly zero effect on vehicular access at other times along the Upper Great Highway. It also ignores the fact that the Lower Great Highway would be completely open every day of the week, and thus available for emergency vehicles at all times. Finally, if an emergency necessitated it, the closure area could also be used for emergency vehicles during weekends and holidays by removing the barriers to vehicular use during such an emergency. This does not raise a substantial issue.

Other contentions also assert that the City's CDP action was defective because the San Francisco's Planning Commission motion approving the project states that "the Local Coastal Program shall be the Western Shoreline Area Plan [the LUP]." The appeals are correct that the LCP is made up of that LUP and the IP, but incorrect that such a somewhat careless omission in a motion somehow undoes the City's CDP action here. It does not. The reality is that the City-approved project, as measured against the applicable Coastal Act and LCP provisions as stated above, does not raise any substantial issues, as also stated above. The fact that a portion of the City's motion omitted reference to the IP does not change that outcome nor somehow change that conclusion. This also does not raise a substantial issue.

The appeals also raise a number of non-valid appeal contentions in that those contentions appear to be frivolous because they simply do not implicate the Coastal Act or the LCP and the Commission is not required to analyze them.

5. Substantial Issue Conclusion

When considering a project that has been appealed to it, the Commission must first determine whether the local government's decision on the project raises a substantial issue of LCP or Coastal Act public access policy conformity such that the Commission should assert jurisdiction over the CDP application 'de novo' (i.e., completely reviewing the project for LCP and Coastal Act, where applicable, consistency) for such development. At this stage, the Commission has the discretion to find that the project

⁹ And, in fact, the Coastal Act wasn't even amended to include reference to VMTs until 2008.

does or does not raise a substantial issue of LCP, or Coastal Act public access, conformance. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue: the degree of factual and legal support for the County's decision; the extent and scope of the development as approved or denied by the County; the significance of the coastal resources affected by the decision; the precedential value of the County'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, the five factors, considered together, support a conclusion that the City and County's approval of a CDP for the proposed project does not raise a substantial issue of LCP or Coastal Act public access conformance.

In terms of the degree of factual and legal support for the City's CDP decision, the City conducted a traffic study, coordinated with the appropriate agencies (including the National Park Service, San Francisco Estuary Institute, and the Commission) through this process, and provided an appropriate analysis of LCP and Coastal Act consistency. Such outreach and evidence support their ultimate CDP decision, including the 2022 SFMTA traffic study which found that vehicular traffic, on the Lower Great Highway and on Sunset Boulevard (a popular road about 10 blocks inland from the Upper Great Highway) was below pre-pandemic traffic levels during the Upper Great Highway closures on Fridays. Therefore, taken together, the City had adequate factual and legal support for the decision, and this factor does not weigh in favor of a finding of substantial issue.

With respect to the extent and scope of the City and County-approved development and the significance of affected coastal resources, the project affects a two-mile stretch of the Great Highway which lies adjacent to Ocean Beach and its fronting dunes, and thus the scope and importance of such resources is significant. Ocean Beach is the defining element of San Francisco's western shoreline area, and the Great Highway is one of the more iconic roadway segments in the state coastal zone, let alone the City's coastal zone. The scope of the project and the importance of such resources argues for substantial issue. At the same time, however, the project decision, as described above, appears to enhance public recreational access to and along the Great Highway and Ocean Beach. While it is true that the dunes have been under some duress for decades and could be better cared for in this regard, these impacts are not the direct result of this project. In other words, the City's decision appears to appropriately navigate the issues raised in that regard, which ultimately argues against substantial issue on these points.

Regarding the potential to set an adverse precedent for future interpretations of the 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, administrative decisions can create what some consider precedent on how LCP policies are to be interpreted, and there is always the potential that the City (and/or other parties interested in the issues raised here) might see City's action here as precedential in some way, despite each case being

considered based on its own facts and context. The precedent in that sense, is that the City appropriately considered the applicable issues for this project, and appropriately concluded that the temporary repurposing of a portion of a coastal roadway for non-vehicular uses on weekends and holidays meets LCP objectives and requirements, and all-told appears to be a public recreational access improvement that appropriately protects other coastal resources. This is a positive LCP outcome, and if that is the precedent that is set, then it is a good one. This factor does not weigh towards substantial issue.

Finally, as to whether the appeal raises only local issues as opposed to those of regional or statewide significance, although the City-approved project is inherently a local issue in some ways, the area in question is also a well-known and prime visitor destination in the region, as is the City as a whole, where it is a recognized draw for people from around the world. Again, however, as with the question of precedence, these significant coastal zone resources were appropriately addressed by the City's CDP action, and this factor does not weigh towards a finding of substantial issue either. In sum, when taken all together, the five factors point towards a finding of no substantial issue.

In conclusion, the Commission finds that Appeal Number A-2-SNF-24-0009 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 the Commission declines to take jurisdiction over the CDP application for this project.

G. Violation

As described earlier, violations of the Coastal Act and the City and County of San Francisco's LCP exist on the subject property including, but not necessarily limited to, unpermitted closure of the Upper Great Highway (between Lincoln Way and Sloat Boulevard) to vehicular traffic on weekends and holidays. Such violations are being addressed in this CDP action appealed here by virtue of authorizing the closure, after-the-fact, and authorizing the proposed pilot project until December 31, 2025.

If the Commission finds no substantial issue in this case, and if the Applicant subsequently undertakes the authorized development in compliance with the terms and conditions of the City's CDP, then these violations will be resolved going forward. If the Commission should instead find that there is a substantial issue here, and thus take jurisdiction over the CDP application, then the violations would remain, and would need to be addressed either through that CDP application or through separate enforcement means.

In any case, although development has taken place prior to the City's CDP action, and prior to this appeal of that action, the Commission's consideration of the substantial issue question has been based solely upon the Coastal Act's public access provisions and the City and County of San Francisco LCP. Commission review and action on this substantial issue question does not constitute a waiver of any legal action with regard to the violations, nor does it constitute an implied statement of the Commission's position regarding the legality of any development undertaken on the subject site without a CDP, or of any other development.

3. APPENDICES

A. Substantive File Documents¹⁰

- City and County of San Francisco CDP 2022-007356CTZ File

B. Staff Contacts with Agencies and Groups

- San Francisco Recreation and Parks Department
- San Francisco Planning Department
- Sunset-Parkside Education and Action Committee
- Friends of Great Highway Park

¹⁰ These documents are available for review from the Commission's North Central Coast District office.