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# Th14a

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 Staff: Kiana Ford - SC  
 Staff Report: 4/26/2024  
 Hearing Date: 5/9/2024

## STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

**Appeal Number:** A-3-STC-24-0012

**Applicant:** City of Santa Cruz

**Appellants:** American Civil Liberties Union and Disability Rights Advocates (joint appeal), and Reginald Meisler

**Local Government:** City of Santa Cruz

**Local Decision:** City coastal development permit application number CP23-0176 approved by the City of Santa Cruz City Council (on local appeal) on March 12, 2024.

**Project Location:** Public streets, rights-of-way, and parking lots within the City of Santa Cruz coastal zone

**Project Description:** Continued operation and enforcement for five years of nighttime prohibition of parking of oversized vehicles and unattached trailers citywide on public streets, rights-of-way, and parking lots between midnight and 5am, provide alternative overnight parking areas and services for such displaced vehicles, and implement related measures (e.g., signage, striping, outreach, permits, enforcement, etc.)

**Staff Recommendation:** No Substantial Issue

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### IMPORTANT HEARING PROCEDURAL NOTE

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

the local government, and their proxies/representatives are allowed to testify during this substantial issue phase of the hearing. Other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does not raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

### SUMMARY OF STAFF RECOMMENDATION

The City of Santa Cruz approved a CDP to continue to implement and enforce, for an additional five years, nighttime oversized vehicle parking restrictions on City streets and a corresponding safe parking program in the coastal zone. The Commission approved a similar project in May 2023 for a one year term, with the ability for extension through a new City-issued CDP based on lessons learned from the first year of operation. This City CDP is that extension, and it mirrors that which the Commission approved last year. The approved project prohibits oversized vehicle parking (i.e., vehicles longer than 20 feet and/or wider than 7 feet and taller than 8 feet) citywide<sup>1</sup> from midnight to 5am, provides alternative overnight parking areas and services for such displaced vehicles (“safe parking”), and implements related measures (e.g., signage, striping, outreach, permits, enforcement, minor modifications, etc.).

The City’s parking restrictions and safe parking program have both been in place since December 2023. And in this timeframe, and as articulated in detail in the City’s year-in-review report (which is attached in **Exhibit 5**), the City has determined the program to be a success in both providing for housing and social services for the most vulnerable (including serving to get 10 participants to permanent housing, and providing important hygiene and other safe health services to over 100 others), and in protecting sensitive coastal resources (including a nearly 60% reduction in trash collected on streets located adjacent to City parks and open spaces). In addition, the City has found fewer oversized vehicles parking long-term on important coastal access streets, thereby ensuring that such spaces are open and available for the general visiting public. In sum, and as informed by the City’s five stakeholder engagement meetings from the past year (which included some of the appellants) to make operational changes, the City has found the program to be an essential tool in its collective toolbox to address these challenging public health, welfare, safety, and coastal resource issues, and represents a comprehensive social services package that is not punitive but rather meant to help those that need it.

The Appellants disagree that the program has been a success and should be extended, and this disagreement is essentially the crux of the issue. They argue that the program’s overnight restrictions translate into decreased access during the day, including because

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<sup>1</sup> The City CDP action only applies to the coastal zone portion of the City, which is about one-quarter of the City, and about one-third of its more urbanized area. Separately but related, the City previously adopted a non-LCP City Municipal Code ordinance that applies outside of the coastal zone and that does the same thing as the CDP, and that ordinance has been in effect in non-coastal zone portions of the City since November 2021.

financial costs (i.e., gas and mechanical repair costs) incurred by relocating such oversized vehicles to safe parking lots at night have proved to be prohibitive in allowing such users to return to the coast during the day, and that the program violates Coastal Act environmental justice provisions and the Commission's Environmental Justice Policy because it disproportionately affects oversized vehicle dwellers, and further disproportionately impacts the subset of such dwellers who have a disability. And any restriction or loss of public coastal access is meaningful and significant and should not be allowed.

In response to these claims, and as explained in detail in the Commission's 2023 CDP findings, the Commission agrees with the overarching contention that any restriction on public coastal access is not something to be taken lightly. The Coastal Act and LCP do speak to maximizing public access, and arguably, any restriction inherently does not. That all being said, as explained before and as explained in detail in this report, 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 it is narrowly tailored to address the particular impact/goal it seeks to address. In this case, and as explained in the Commission's 2023 action, and as further understood with empirical evidence from the program's first year of implementation, staff believes that the City's program meets such tests and can be found Coastal Act and LCP compliant.

Ultimately, the public access question before the Commission in this appeal is actually rather simple. Namely, does the City-approved program affect the public's ability to access and recreate in the coastal zone. Here, the program would continue to operate between midnight and 5am, a time when public access pursuits are typically quite limited, and it would only affect an even smaller subset of that very small sample size that is seeking public access in the coastal zone via parking an oversized vehicle on public streets, rights-of-way, and parking lots. In addition, individuals with a valid disabled license and placard would not be subject to the oversized vehicle restrictions, and thus would still be permitted to park in on-street parking spaces throughout the night. In that context, the effect of the City's action on nighttime public access is minimal in staff's view and only affects a small number of such users. And the addition of the safe parking program allows oversized vehicle users to park in close proximity to the coast and its beaches overnight, with easy access to free parking areas during the day. The program has not shown any demonstrable adverse public access impacts, and the City's documented successes—including critically in terms of getting people housed—is clearly a sign that the program is meeting City objectives.

In sum, the City has clearly taken the issues very seriously and has found the program to be a successful and effective tool to accomplish its dual objectives of providing needed social services and in a manner that protects coastal resources. The City has listened to the various stakeholders, made refinements and changes in response to certain suggestions, and documented the program's effectiveness thus far. All of this has led to the City's CDP approval for an extended authorization, which is essentially the process envisioned by the Commission's 2023 CDP approval. As part of that action, the Commission heard the various pros and cons, and ultimately approved a CDP for a

one-year duration with the understanding that doing so would provide a pilot term to assess implementation success and challenges, with the ability to make changes and refinements based on lessons learned and public feedback. And after this initial period, the City can carry forward the program into a new CDP authorization, including as they have the tools and staff resources to do so. And the City's approval includes important built-in review loops in consultation with the Executive Director, thereby affording a certain level of oversight regarding program changes. The ability to make changes is a good thing for this type of program, which is meant to be adaptive and nimble in order to respond to implementation realities, but with a certain level of oversight to address any potential coastal resource problems, and/or whether the scope of proposed changes is significant enough to warrant additional review.

While such a program is not without its challenges, the City has taken its obligations very seriously, with various City departments active and engaged in a good faith attempt to holistically tackle these complex social and coastal resource issues. The one-year pilot has shown the program can successfully function without significantly impacting certain types of public coastal access, while actually benefiting other forms of access, and staff recommends that the Commission exercise its discretion to find that the City's CDP action does not raise a substantial issue, and decline to take jurisdiction over the CDP application on that basis. The single motion necessary to implement this recommendation is found on page 6 below.

TABLE OF CONTENTS

1. MOTION AND RESOLUTION ..... 6

2. FINDINGS AND DECLARATIONS ..... 6

    A. Project Background and Description ..... 6

    B. City of Santa Cruz CDP Approval..... 10

    C. Appeal Procedures ..... 10

    D. Summary of Appeal Contentions ..... 12

    E. Standard of Review ..... 12

    F. Substantial Issue Determination ..... 13

        1. Public Access..... 13

        2. Environmental Justice ..... 22

        3. Conclusion ..... 28

3. APPENDICES ..... 30

    A. Substantive File Documents..... 30

    B. Staff Contacts with Agencies and Groups ..... 30

**EXHIBITS**

- Exhibit 1 – City-Approved Parking Restriction Area
- Exhibit 2 – City-Approved Parking Program Description
- Exhibit 3 – City’s Final Local CDP Action Notice
- Exhibit 4 – Appeals of City CDP Approval
- Exhibit 5 – City’s Year-in-Review Report

**CORRESPONDENCE**

## 1. MOTION AND RESOLUTION

Staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission would not take jurisdiction over the underlying CDP application for the proposed project and would not conduct further hearings on this matter, and that the local government CDP decision would stand 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, which would come back to the Commission for the de novo portion of the hearing and potential action at a subsequent meeting. 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-24-0012 **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-24-0012 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

## 2. FINDINGS AND DECLARATIONS

### A. Project Background and Description

The project follows nearly a decade of City efforts to better regulate overnight parking for oversized vehicles along City streets, parking lots, and rights-of-way. At its core, the City's project is generally borne of two primary concerns: that many of the oversized vehicles parking in the City are used as housing and that the City's streets are not equipped to serve as domiciles (including lacking proper waste and trash collection). In addition, since many oversized vehicles park on City streets for long stretches of time, they thereby occupy parking spaces that should be open and available to the general public, including for coastal access purposes. Without some type of intervention, there is little ability for the City to address these problems, including the City's goal of getting those who solely live in their vehicles access to housing and other social services. All of these issues are largely broad public health, safety, and welfare concerns, but issues related to coastal access and waste disposal are also coastal resource concerns as well.

Toward that end, the City previously approved a CDP for an overnight oversized vehicle parking prohibition in 2015, and that City CDP action was appealed to the Commission in 2016 (Appeal Number A-3-STC-16-0063). In this previous version, the City sought to prohibit oversized vehicle parking city-wide from midnight to 5am; notably, it did not provide any alternative parking spaces or programs for displaced vehicles. Following a

public hearing, the Commission found a substantial issue with the City's approval and took jurisdiction over that CDP application in 2016. However, the City ultimately abandoned that project in favor of pursuing a new version of the project that better responded to the Commission's articulated concerns, and thus proposed a new program that was approved at the local level in 2022. That program provided for a similar midnight to 5am parking prohibition, as well as new provisions relating to safe parking spaces (although the exact locations and parameters for such a program were not fully identified) and a prohibition on oversized vehicles parking at any time within 100 feet of certain roadway features (i.e., crosswalks, intersections, stop signs, official electric flashing devices, and approaches to any traffic signals). That approval was appealed to the Commission,<sup>2</sup> and the Commission found substantial issue with the City's approval action in July 2022. Among the LCP and Coastal Act issues identified, the Commission was concerned that the safe parking program was not fully fleshed out, thereby lacking clarity on key program provisions related to alternative parking locations for displaced vehicles in lieu of parking on public streets. In addition, the prohibition on oversized vehicles parking at all times within 100 feet of certain roadway components would have rendered 54% of the coastal zone's roads (28 out of a total of 52 road miles) off-limits to such parking. Both elements would have adversely impacted the public access and recreation abilities of those who own RVs and other large vehicles and use those vehicles to access public coastal resources, with a disproportionate impact on those who live in their vehicles and have no other parking options.

Subsequently, City and Commission staff sought to address project concerns for a revised project and ultimately brought the project back to the Commission in May 2023. In response to the Commission's concerns, the City revised the nighttime oversized vehicle parking restrictions project by removing the 100-foot ban entirely from its proposal, and more fully and explicitly developing the parameters of the safe parking program. Additionally, the CDP included a number of conditions of approval<sup>3</sup> related to outreach, signage, operations and management, and the formation of a stakeholder group to inform and provide regular input regarding the implementation of the program. Lastly, the CDP was given a one-year term as a "pilot" program, after which time the Commission CDP would expire and the City would need to seek approval of a new City CDP should they desire to continue its operability. The Commission voted to approve the CDP in May 2023, and in that approval directed the City to assess the implementation of the project over the year timeframe, including in terms of outreach, enforcement, participation, recommendations by the stakeholder group, and lessons learned. The City ultimately began the process of seeking a new CDP in early 2024, which was approved at the local level in March 2024 and subsequently appealed to the Commission, approximately one-month prior to the expiration of the existing CDP.

The City-approved project overall would carry forward and continue the basic components already in effect from the Commission's 2023 CDP approval (but that will

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<sup>2</sup> Where both Appellants of the current City CDP action in this case also appealed the prior City CDP action in 2022.

<sup>3</sup> More specifically, the conditions of approval mandated a number of "plans" be submitted within one month of CDP approval (including outreach, signage, and operations and management plans) for Executive Director review and approval.

expire on May 11, 2024 without a new/extended authorization), along with some additional refinements. Specifically, the CDP would prohibit parking of oversized vehicles (i.e., defined to be vehicles<sup>4</sup> longer than 20 feet in length, and/or wider than 7 feet and taller than 8 feet) citywide<sup>5</sup> on public streets, rights-of-way, and parking lots between midnight and 5am,<sup>6</sup> would provide alternative overnight parking areas and services for such displaced vehicles (“safe parking”), and would implement related measures (e.g., signage, striping, outreach, permits, enforcement, etc.).<sup>7</sup> The safe parking program provides alternative overnight parking spaces for oversized vehicles in various locations within three categories:<sup>8</sup> 1) emergency spaces that provide emergency overnight parking for a single night; 2) overnight-only spaces that offer overnight parking for up to 30 days (with the possibility of extension if capacity allows) with trash and hygiene facilities provided; and 3) long-term spaces that provide the same elements as the overnight-only ones as well as 24/7 parking facilities with access to additional amenities and support services (e.g., restrooms, dumpsters, showers, electrical charging stations, vehicle battery charging, additional parking for users’ other vehicles, and personal case managers that assist participants in applying to housing programs, obtaining health insurance, seeking mental health support, etc.).<sup>9</sup>

In total, the City currently provides thirty-eight overnight-only spaces, between sixteen and twenty-two long-term spaces (capacity depends on the size of the oversized vehicles participating at any given time), and a dedicated lot for emergency parking (and other lots available should there be demand for them). As of April 2024, emergency and overnight-only spaces continued to be available, but all of the long-term spaces were occupied and a waiting list had been established. However, under the City’s program, if there are no alternative parking spaces available for oversized vehicles in any of the areas, the City will give any vehicle seeking a spot in the program passes to park overnight on the street until a space becomes available. Citations received are \$50 per ticket; however, the City automatically waives the first ticket received, and has a robust appeal process for tickets otherwise. Participants in the safe parking program are

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<sup>4</sup> As that term is defined in Section 670 of the California Vehicle Code, namely: “A “vehicle” is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.”

<sup>5</sup> The City CDP action only applies to the coastal zone portion of the City, which is about one-quarter of the City, and about one-third of its more urbanized area.

<sup>6</sup> Because the City already has a Coastal Commission-issued CDP that limits parking of all vehicles on the seaward side of West Cliff Drive between the hours of midnight and 5am (CDP A-3-STC-07-057), affecting about one-half of all of the City’s available immediate shoreline parking, the City’s action here does not affect that area as parking is already restricted during that time frame.

<sup>7</sup> Note that the City previously adopted a City Municipal Code ordinance that applies outside of the coastal zone and that does the same thing, and that ordinance has been in effect in non-coastal zone portions of the City since November 2021 (City ordinance No. 2021-20).

<sup>8</sup> In the previous approval of the program, the City referred to each category under a “tiered” system (i.e., emergency parking was Tier 1, overnight-only parking was Tier 2, and long-term parking was Tier 3). However, feedback from outreach workers and safe parking participants commented that the tiered system was confusing to many and the City ultimately began referring to each space under the program type (i.e., emergency, overnight-only, and long-term).

<sup>9</sup> Emergency and overnight-only facilities are operational from 8pm to 8am every day, while long-term spaces are operational 24/7.



required to register with the City and sign a code of conduct, and in return the City provides overnight spaces and associated facilities (e.g., porta-potties, hand washing stations, garbage/recycling, etc.) free of cost.

The program also includes permit options both for those living in a dwelling unit<sup>10</sup> within the City as well as hotel/motel guests. These permits allow oversized vehicles (either for the resident themselves or for their guest) to be parked on the street overnight on a temporary basis. For those who reside in a dwelling unit, the City provides an annual permit for parking within 400 feet of their unit for four 72-hour periods total per calendar month, and offers up to six permits annually for their out-of-town guests, subject to the same restrictions. For hotels and motels, the City offers unlimited permits that can be distributed to their guests, where each such permit would be valid for up to 72 hours.

The above-described elements, with some refinements, are largely the same as those approved by the Commission as part of the one-year pilot program. The City also now includes a few notable additions and modifications based on lessons learned and feedback, including:

- Approve the program for 5 years (i.e., until February 1, 2029) and allow for subsequent extensions of up to five years at a time. Such extensions would only be permitted upon written approval by the City's Planning Director and the Coastal Commission's Executive Director that is only allowed to be granted if, among other things, the program is working well and without significant coastal resource impairment.
- Continue to conduct stakeholder group meetings, but hold at least three meetings (as compared to four before) in the first year, followed by at least two meetings in subsequent years. If more frequent meetings prove important/needed, the City would undertake more meetings, as they have done under the one-year pilot program.
- Modify outreach documents to more clearly identify elements of the program, including based on stakeholder feedback (e.g., making clear that disability accommodations are available, making clear that citations can be appealed, etc.).
- Allow the potential for minor modifications to the oversized vehicle regulations and/or the safe parking program based on lessons learned over time and stakeholder outreach, where such modifications would require agreement by the Coastal Commission's Executive Director prior to implementation.
- Collect qualitative and quantitative data on the effectiveness of oversized vehicle restrictions and the safe parking program in terms of environmental and public

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<sup>10</sup> A dwelling unit is defined as a building or portion of a building, including one or more rooms which is/are designed or used as a residence by one family or housekeeping unit, with facilities for living, sleeping, eating, sanitation, and food preparation.

health/safety impacts; conduct a yearly oversized vehicle count within the city; and solicit feedback from safe parking participants on a regular basis.

In sum, the City's approval largely carries forward the substantive elements that the Commission approved last year, with the primary differences being ones of a procedural nature, including an initial five year authorization with the ability for extension, as well as the ability to make certain minor changes to better reflect on-the-ground needs and operations issues, all subject to Executive Director oversight.

See **Exhibit 1** for a map of the City-approved overnight parking restriction area (i.e., public streets, rights-of-way, and parking lots in the City's coastal zone), and see **Exhibit 2** for a map of the City safe parking sites.

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

On February 1, 2024, the City of Santa Cruz Planning Commission approved a CDP for the above-described project, and that approval was subsequently appealed (by the American Civil Liberties Union, Disability Rights Advocates, and Reginald Meisler (of Santa Cruz Cares)) to the City Council. The City Council upheld the CDP approval (by a vote of 6-1) on March 12, 2024. The Coastal Commission's Central Coast District Office received the City's Final Local CDP Action Notice (see **Exhibit 3**) on March 18, 2024, and the Commission's ten-working-day appeal period for this action began on March 19, 2024 and concluded at 5pm on April 2, 2024. Two valid appeals (discussed below, and see **Exhibit 4**) of the City's CDP action were received during the appeal period.

### **C. Appeal Procedures**

Coastal Act Section 30603 provides the standards for an appeal to the Commission for certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. The City's CDP approval is appealable for multiple reasons in this case: first, on locational grounds (i.e., for those portions of the project area located between the first public road and the sea; within 300 feet of beaches, coastal bluffs, or the mean high tide line where there is no beach; and/or within 100 feet of wetlands and/or streams), and second, because it is a major public works project.<sup>11</sup>

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<sup>11</sup> The Coastal Act defines public works to include "All public transportation facilities, including streets, roads, highways, public parking lots and structures, ports, harbors, airports, railroads, and mass transit facilities and stations, bridges, trolley wires, and other related facilities" (Section 30114), and its implementing regulations define "major public works" to include "publicly financed recreational facilities

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, 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.<sup>12</sup> 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 any testimony and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the

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that serve, affect, or otherwise impact regional or statewide use of the coast by increasing or decreasing public recreational opportunities or facilities" (Title 14, Division 5.5, Section 13012 of the California Code of Regulations (CCR)). The affected streets, rights-of-way, and parking lots meet both definitions. In addition, the cost of the City-approved program is in excess of \$299,188, and the project constitutes a major public works project for this reason as well (per Section 13012(a)).

<sup>12</sup> 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..." (CCR Section 13115(b)). CCR Section 13115(c) provides, along with past Commission practice, that the Commission may consider the following five factors when determining if a local action raises a substantial issue: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and the Coastal Act's public access provisions; (2) the extent and scope of the development; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

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 that is the subject of the CDP application is consistent with the applicable LCP (and in certain circumstances the Coastal Act's public access and recreation provisions; which would apply to portions of the project approved by the City in this case). 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 two appeals<sup>13</sup> contend largely the same issues and concerns that have been raised throughout the various CDP and appeal actions over the years. The appeals argue that the City-approved CDP for the project violates LCP and Coastal Act public access provisions in two main ways: (1) it does not provide maximum equitable public access for those who live in oversized vehicles, including specifically during the daytime, and will actually decrease such access for these groups; and (2) it violates Coastal Act environmental justice provisions and the Commission's Environmental Justice Policy because it disproportionately affects oversized vehicle dwellers, and further disproportionately impacts the subset of such dwellers who have a disability. The appeals also allege there have been adverse public coastal access impacts on those who reside in their vehicles as a result of the program's operation in the past year, and those impacts will only increase with the City's CDP approval/extension. And finally, the appeals raise procedural questions, including whether enough time has passed to draw affirmative conclusions about the issues and impacts associated with the program, and thus whether it is appropriate for the City to approve a five-year CDP at this time. Please see **Exhibit 4** for the appeal contentions.

#### **E. Standard of Review**

The standard of review for these appeals is the City of Santa Cruz LCP and the Coastal Act's public access provisions.<sup>14</sup> The appeals allege that the City-approved project does not conform with that standard of review, and the Commission here is charged with evaluating those allegations in light of LCP provisions and Coastal Act public access provisions.

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<sup>13</sup> One joint appeal from the American Civil Liberties Union (ACLU) and Disability Rights Advocates (DRA), and one from Reginald Meisler.

<sup>14</sup> In addition, in terms of the environmental justice contentions, the Coastal Act also allows the Commission to consider environmental justice concerns even if the LCP is silent on such issues (see Coastal Act Section 30604(h), and the Environmental Justice section that follows).

## F. Substantial Issue Determination

### 1. Public Access

#### ***Applicable Coastal Act and LCP Provisions***

The Appellants do 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 30212.5.** *Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

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

**Section 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.*

*(c) In carrying out the public access policies of this article, the commission and*

*any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.*

**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.*

**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):

**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.*

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

**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.*

**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.*

**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. Section 30212.5 ensures new parking is adequately distributed within an area to mitigate potential impacts. Lower cost visitor and recreational facilities are protected and encouraged under Section 30213. 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.

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 is 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 Appellants make it a central theme of their appeals. Taken together, these overlapping policies require maximization of public access and recreation opportunities for the public, particularly free and low-cost such opportunities, 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.

### **Analysis**

As noted above, the primary issues articulated in the appeal suggest that the City-approved program runs afoul of Coastal Act and LCP provisions to maximize public coastal access. They argue a program that limits overnight 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. The City, on the other hand, argues that the program is needed to address various issues, including ensuring that those living in their vehicles have access to social services and hygiene facilities, that the City's streets are not equipped with the infrastructure needed to serve residential needs, and that ensuring parking turnover means limited parking spaces are available for the general public for their own access purposes. The City also firmly believes that the program they have developed is the result of refinements over time, including with suggestions from the Appellants and other relevant stakeholders, and represents a comprehensive social services package that is not punitive but rather meant to help those that need it.

The City supports its claims both as part of its analyses and vetting before the Planning Commission and City Council, as well as through its year-in-review report required of Special Condition 7 of the Commission's 2023 CDP approval (see the report in **Exhibit 5**). This report walks through the City's implementation efforts, and provides a thorough and comprehensive assessment of the coastal resource and social service outcomes since the program went into effect, as well as its outreach and engagement efforts.

With respect to outreach, over the first year of program implementation, the City held five stakeholder group meetings (the CDP actually required a minimum of four), which provided a direct avenue for feedback on the application and efficacy of the program.<sup>15</sup> City staff documented their engagement with stakeholder participants on issues surrounding program outreach, environmental impacts, permits, and enforcement. In fact, the City indicates that some of the recommended stakeholder suggestions were indeed incorporated into their program, with others were not.<sup>16</sup> The City documented when and why suggestions by stakeholders were not incorporated into the program, including when such suggestions were: 1) already part of the program; 2) would require additional staff/resources/funding not currently available; and 3) would have required

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<sup>15</sup> The stakeholder group is comprised of ten participants representing various groups and interests, including those related to unhoused advocates. The Appellants in this matter (namely ACLU, DRA, and Reginald Meisler) are all members of the stakeholder group through their respective representatives.

<sup>16</sup> Some examples of stakeholder suggestions that were incorporated into the program include adding language to program sign-up forms to provide an option to connect with support services; providing clarity that spaces in the safe parking program are available on outreach documents; adding an email option to allow for additional inquiries about the safe parking program; proactively soliciting feedback from safe parking participants; relocating safe parking participants from one safe parking lot to another after suspicious activity was reported; updating safe parking information on non-City websites; and continuing to engage with Santa Cruz County on the need for a similar safe parking program in adjacent unincorporated County areas.



City Council action to implement.<sup>17</sup> Overall, the City found that the engagement efforts were fruitful, and has carried over this outreach program into its new CDP to continue to glean best practices and refinements from those with varying viewpoints on the issues.

And as for the substantive results of program implementation, the City's year in review report summarizes program effectiveness in terms of how the program has helped individuals from a social services perspective, which is really the overall goal of the program. Indeed, both the overnight-only and long-term 24/7 parking spaces have been used by numerous individuals, with the City documenting 78 individuals using overnight-only spaces and 47 individuals using the long-term spaces since the program's inception. Of those individuals, seven overnight-only users have moved into long-term parking spaces, while ten have moved from long-term parking into permanent housing (representing a 36% success rate for transition into permanent housing opportunities). The City notes (see page 3 of **Exhibit 5**):

*As of April 10, 2024, the 24/7 Safe Parking program enrollment is comprised of 19 individual participants; 47 total individuals have enrolled since the beginning of the program. Of the 28 individuals who have exited the program, ten have moved into permanent housing. This 35.7% rate of moving individuals to permanent housing is substantial and exceeds the rate of what is commonly considered a highly successful program housing rate in the homelessness response realm.*

In short, and as explained in more detail in the City's report, the City views the program successful to date in terms of getting the most vulnerable access to services and housing, including permanent housing and helping to combat the issue of homelessness in the area.

And in terms of coastal resource concerns, the City too has found the program to address the issues it sought to address, including in terms of trash collection and public access improvements. Specifically, the City states (see page 12 of **Exhibit 5**):

*City staff have received feedback from members of the public, including OVO advocate participants of the Stakeholder Outreach Group, that overall, OV entrenchment has diminished, and impacts associated with long-term OV stays in areas such as Delaware Avenue, where OV entrenchment was previously common and where environmentally sensitive habitat is abundant, have significantly diminished. Councilmembers of the OVO Subcommittee have received similar reports from their constituents. A reduction in long-term stays by oversized vehicles, coupled with improved access by OV dwellers to proper*

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<sup>17</sup> For example, some stakeholders suggested providing monthly \$200 gas cards to overnight-only safe parking participants to offset the cost of moving their vehicle daily. The City responded that subsidizing gas costs is outside the scope of the program and responsibility of the City, but that local organizations have expressed interest in voluntarily offering gas cards to qualifying individuals. In another case, some stakeholders in support of the oversized vehicle restrictions suggested adding additional residential parking permit accommodations to residents who own oversized vehicles. The City responded that such a modification could be considered in the future, but at this time would require City Council action to implement.

*hygiene and trash disposal facilities via the City's Safe Parking Program, has corresponded to observations of decreased trash accumulation and diminished prevalence of outdoor disposal of untreated human waste, including in areas near sensitive habitat, such as Antonelli Pond, where OV entrenchment and incidents of outdoor restroom use were common prior to OVO implementation. Such observations represent reasonably anticipated outcomes of implementation of the City's Safe Parking Program and enforcement of a prohibition on overnight parking of oversized vehicles in public rights-of-way.*

The City's Homelessness Response Field Crews have documented a 57% decrease in trash volume from pre- and post-program implementation, with an average amount of 82, 42-gallon trash bags picked up every month prior to the implementation of overnight parking restrictions and 35 such bags per month afterwards. The City cites this data as evidence of the program's environmental benefits, including preventing such waste from making its way into adjacent sensitive habitats and nearby waterways. Additionally, the City points to the free hygiene facilities provided as a means to prevent leakage of untreated sewage via blackwater tanks, and is currently in the process of developing a free blackwater dump station (see page 4 of **Exhibit 5**).

In sum, the City has clearly taken the issues very seriously, and has found the program to be a successful and effective tool to accomplish its dual objectives of providing needed social services and in a manner that protects coastal resources. The City has listened to the various stakeholders, made refinements and changes in response to certain suggestions, and documented the program's effectiveness thus far. All of this has led to the City's CDP approval for an extended authorization, which is essentially the process envisioned by the Commission's 2023 CDP approval. As part of that action, the Commission heard the various pros and cons, and ultimately approved a CDP for a one-year duration with the understanding that doing so would provide a pilot term of sorts to assess implementation success and challenges, with the ability to make changes and refinements based on lessons learned and public feedback. And after this initial period, the Commission intended that the City carry forward the program into a new City CDP authorization, including as they have the tools and staff resources to do so. The Commission found in its 2023 CDP action:

*Critically, the Commission also believes that this program, which is really a social services program, is more appropriately managed by the City, and here approves a one-year Commission CDP to allow the program to get up and running, but after that time the City would need to do a new City CDP for the program (see Conditions 1 and 2). In that way, the Commission's scarce staffing resources are freed up for planning and permitting items with more serious coastal resource consequences, and the City can better integrate its overall social services and program management through a City-issued CDP, including more seamlessly integrating this program with the array of additional programs that the City implements to address homelessness and broader social issues.*

In other words, this new City CDP is following the process the Commission identified in last year's CDP action, and builds upon its identified success. And the City's approval includes important built-in review loops in consultation with the Executive Director,

thereby affording a certain level of oversight regarding program changes. The ability to make changes is a good thing for this type of program, which is meant to be adaptive and nimble in order to respond to implementation realities, but with a certain level of oversight to address any potential coastal resource problems, and/or whether the scope of proposed changes is significant enough to warrant additional review.

That all being said, the Appellants disagree that the program has been a success and should be extended, and this disagreement is essentially the crux of the issue. They argue that the program's overnight restrictions translate into decreased access during the day, including because financial costs (i.e., gas and mechanical repair costs) incurred by relocating such oversized vehicles to safe parking lots at night have proved to be prohibitive in allowing such users to return to the coast during the day. And any restriction or loss of public coastal access is meaningful and significant and should not be allowed.

In response to these claims, and as explained in detail in the Commission's 2023 CDP findings, the Commission agrees with the overarching contention that any restriction on public coastal access is not something to be taken lightly. The Coastal Act and LCP do speak to maximizing public access, and arguably, any restriction inherently does not. That all being said, as explained before, 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. In this case, and as explained in its 2023 action, and as further understood with empirical evidence from the program's first year of implementation, the Commission believes the City's program meets such tests and can be found Coastal Act and LCP compliant.

The City's parking restriction is limited to the hours between midnight and 5am, which is not a high public access use time.<sup>18</sup> In fact, while the City does not have data on the amount of nighttime coastal access users (and for which public parking might be necessary), it is fair to presume that the majority of coastal access takes place outside of the midnight to 5am window. While there are always a few people that avail themselves of nighttime beach walks, West Cliff Drive walks, surfing, fishing, or other public access pursuits at night, the number of such access users during those nighttime hours are a small fraction compared to the number of daytime coastal visitors. Further, the public access restriction in this case is limited to those using oversized vehicles for such access, which itself is a subset of nighttime public access users. As a result, the public access impact of the program on nighttime public access is negligible.

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<sup>18</sup> The Commission has made similar findings as it relates to nighttime public access use in the City of Santa Cruz in multiple Commission-approved CDP cases that are relevant here (including West Cliff Drive midnight to 5am parking restrictions approved in 2008 (CDP A-3-STC-07-057), and the City's Beach Management Plan midnight to one-hour before sunrise use restriction approved in 2020 (CDP 3-20-0088)), and relies on those cases and findings as evidence applied to this case.

And with respect to potential daytime access impacts, the City has two primary points. First, they disagree that access has been diminished for daytime users. The Appellants point to the reduction in citations from the initial rollout of restrictions as evidence that people have moved on to other locales inland and away from the coastal zone. The City, conversely, believes such a conclusion to be speculative, and that a better and more reasonable conclusion is that the program is simply working, including where, upon rollout and since, there were fewer oversized vehicles parked along City streets at night, where such vehicles instead were using the free safe parking spaces and facilities that the City provides for them.<sup>19,20</sup> And more spaces available for the general visiting public is a sign the program is working since it means more people have the ability to park and recreate rather than being usurped by long-term users. In short, the City disagrees that there has been any demonstrable adverse impact to public coastal access, and instead argues that the public access impact is in fact positive overall, as the nighttime restriction and the alternative safe parking program has resulted in more public parking spots available during the prime daytime public access times, as many oversized vehicles had previously been entrenched at such sites. And in many cases, the resulting turnover of vehicles from parking spots has led to more opportunities for vehicles to access the coast, especially for areas like Swanton Boulevard and Delaware Avenue adjacent to Natural Bridges State Beach and near to West Cliff Drive. Thus, it is a fair conclusion to say that the project has not significantly adversely impacted public coastal access and in fact, has resulted in some benefits to access in the form of parking turnover.<sup>21</sup>

And second, the City has acknowledged the potential financial hardship of needing to move vehicles on a regular basis, and has developed several points to address these issues. It is important to note that all of the overnight-only and emergency parking spots are located approximately one-mile from the coast and nearest beach.<sup>22</sup> And while it is accurate that safe parking participants enrolled in the emergency and/or overnight-only portions of the program are expected to move their vehicles daily, the City has a significant amount of free coastal parking within City limits that safe parking participants may avail themselves of during the day. Additionally, the safe parking program itself is

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<sup>19</sup> And the City points out that these conclusions are based on annual point-in-time counts of oversized vehicles, which is a much more accurate way to assess whether the number of oversized vehicles in the area is changing as opposed to anecdotal observations.

<sup>20</sup> While program participation has fluctuated, as of April 2024, 12 of 38 overnight-only spaces were occupied by participants, while the long-term program was operating at maximum capacity with 24 participants (see **Exhibit 2** for safe parking locations). The City has indicated that only long-term spaces, which have access to social services, are consistently full, while overnight-only spaces continue to be readily available for use. And importantly, the City has conditioned the project to accept everyone who signs up for the program and provide either a spot in a safe parking location or a pass to park on the street overnight until a safe parking space becomes available (see in **Exhibit 2**). Thus, nobody is forced to leave with no alternative place to go.

<sup>21</sup> To drive the point further home, if this were the other way around and the Commission were tasked to evaluate a proposal to allow semi-permanent oversized vehicles parking in prime public access street parking spots, that would raise public access concerns due to the monopolizing of such prime coastal access parking locations.

<sup>22</sup> The long-term safe parking spaces are located approximately three miles from the coast, but such spaces offer a free shuttle that takes them into downtown.

free and provides amenities at no cost to its users, such as bathrooms, hand washing stations, and trash cans. While some cost may be incurred from users moving their vehicles to safe parking spots, such cost is a part of owning a vehicle and the program does not require users to relocate many miles away to a remote parking site; rather such parking is located in core transit areas with easy access to the coast and free coastal daytime parking spaces. And importantly, the City is required to provide accommodation to everyone who signs up for the program, and provide either a spot in a safe parking location or a free pass to park on the street overnight until a safe parking space becomes available. And the project provides an important array of services directed towards helping those who find themselves unhoused and living in their oversized vehicles (e.g., restrooms, dumpsters, showers, electrical charging stations, vehicle battery charging, additional parking for users' other vehicles, and personal case managers that assist participants in applying to housing programs, obtaining health insurance, seeking mental health support, etc.).<sup>23</sup> In this, it is clear the City has committed itself to providing these kinds of important services to those participating in the program, and have devoted the resources and staff to do so, portending a continuing commitment of this sort. Put another way, the City is well positioned to oversee such a program, and it has shown that it can better integrate its overall social services commitments through its program management.<sup>24</sup>

In conclusion, the Commission agrees with the Appellants' overarching concern that any public access restriction is potentially significant especially viewed from an EJ lens. And in fact, as displayed herein and in similar proposals over the years, the Commission takes these issues very seriously. But for the various reasons articulated in the Commission's 2023 CDP approval and as described based on empirical data from the first year of program implementation, the City's project can be found Coastal Act and LCP compliant. The City's solution is limited and targeted to the late overnight hours, when public access use is already extremely limited. And in place of simply instituting an overnight parking ban by itself, the City has implemented a complementary safe parking program where oversized vehicles can park overnight and users can safely sleep in their vehicles and take advantage of social services and amenities, all of which is provided at no cost to such users. And the program appears to be working in terms of providing needed housing and social services and coastal resource benefits.

And actually, bracketing that the project can be found Coastal Act/LCP consistent, at the substantial issue phase of the appeal, the Commission is not even tasked with making Coastal Act or LCP consistency findings. On the contrary, the Commission is

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<sup>23</sup> And the City is also able to more efficiently provide such services in the program setting, whereas the same cannot be said when such vehicles are spread out along City streets. In fact and in practice, it is simply much easier and cost-effective to provide these services when vehicles are grouped together (i.e., within a parking lot or other such area) rather than along residential streets where space, access, and resistance from adjacent residents can present challenges.

<sup>24</sup> Including more seamlessly integrating this program with the array of additional programs that the City implements to address homelessness and broader social issues. For example, the City contracts with Santa Cruz Free Guide to provide case managers for 24/7 parking participants. Four full-time case managers provide support services to participants and are staffed on site for forty hours during the week. Adjacent to the 24/7 parking spaces is the Armory building and the City Overlook Emergency Shelter, which have staff on site 24/7 provided by the Salvation Army.

tasked with evaluating the City's action to understand whether it raises a substantial issue in terms of such consistency. The Commission has discretion on whether to take jurisdiction over CDP applications in appeal cases.<sup>25</sup> And in fact the Commission has on certain occasions found that local government decisions do not raise a substantial issue even when they are not consistent with the LCP for a variety of reasons.<sup>26</sup> Here, the City has a clear record of documenting the important reasons for such overnight parking limitations, the limitations are tailored and thus should not be significant, and various measures are in place to ensure that any remaining impact is addressed. Thus, the Commission exercises its discretion to find that the City's CDP action does not raise a substantial public access issue, and declines to take jurisdiction over the CDP application on that basis.

## 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 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*

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<sup>25</sup> And when the Commission does find a substantial issue, and it takes jurisdiction over the CDP application, then, although the Commission continues to retain its discretion to approve, approve with conditions, or to deny a CDP, either form of approval requires the Commission to find the development in question LCP (and Coastal Act, as applicable) consistent. In other words, the standards at the substantial issue phase versus the potential de novo phase of an appeal are different, where the Commission must find LCP (and Coastal Act, as applicable) consistency only in the case of the latter.

<sup>26</sup> See, for example, Appeal Numbers A-3-SCO-16-0069 (Verizon), A-3-SCO-17-0037 (Britt SFD), A-2-SON-20-0042 (Chapman), and A-2-SON-22-0015 (Chang).

*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**

To date, the key area of controversy associated with the City-approved project has not been about public recreational access per se (as discussed in the previous section), but rather about the impacts that the City-approved parking restrictions have on unhoused individuals who use oversized vehicles as a place to sleep overnight. The primary substantive concern identified is that while the midnight to 5am oversized vehicle parking restriction would apply equally to all persons attempting to park in the City’s coastal zone during that time period, it disproportionately impacts unhoused individuals who sleep at night in their oversized vehicles, and further disproportionately impacts those subsets of individuals with disabilities. Those with disabilities may have physical and mobility challenges that make it more difficult to adhere to the overnight restrictions, move to the safe parking program areas, and reach the coast. This could represent a potential environmental justice issue that the Commission needs to also take into consideration, including to ensure that this community had access to the City’s CDP consideration processes and the Commission’s appeal process to make their views known and to help shape the debate on potential decisions, and ultimately to assess whether such decisions equitably address and distribute coastal resource impacts and

enhancements for all, including the unhoused and disabled community.<sup>27</sup> Here, Appellants contend that the City-approved project would disproportionately affect unhoused individuals with disabilities that use oversized vehicles as a place to sleep and does not provide adequate accommodations for such individuals. These are the same issues that were identified in the Commission’s 2022 substantial issue determination and 2023 CDP approval, and those deliberations can help inform the Commission’s understandings in this case as well.

### Identifying Environmental Justice Communities

The first step in this environmental justice analysis is to determine whether unhoused individuals, including individuals with disabilities, that use an oversized 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.<sup>28</sup> 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 individuals,<sup>29</sup> thus including disabled such individuals, that use an oversized 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 an oversized 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. Although disaggregated data for unhoused individuals living in an oversized vehicle does not appear to exist, approximately one-third of individuals who experience homelessness experience

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<sup>27</sup> And one of the two main appeal contentions is framed as an environmental justice concern; specifically that the approved project unfairly limits access to the coast for those with disabilities who use oversized vehicles as a place of shelter.

<sup>28</sup> 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.

<sup>29</sup> 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 oversized vehicles at night.



chronic patterns of homelessness due to a disability.<sup>30</sup> In Santa Cruz County, individuals with disabilities have been estimated to make up about 50% of the unhoused population, while only accounting for 7.5% of the total population in the City of Santa Cruz.<sup>31,32</sup> 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 an oversized vehicle as a place to sleep at night qualify as members of an environmental justice community. Thus, the Commission here finds that such unhoused individuals, including disabled such individuals, in this case those who sleep in oversized 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.

### 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, including local and broader unhoused advocacy groups and stakeholders, to participate. The City also held five stakeholder group meetings, where unhoused advocates were part of such stakeholder group, to solicit input and make program changes. The City also conducted two public hearings, including before the City Planning Commission and, on appeal, before the City Council.<sup>33</sup> The Commission's process has likewise been open and transparent, and Commission staff has maintained open lines of communication with all engaged parties including ultimately in terms of the notice and outreach associated with this report and the Commission hearing scheduled to take place on May 9, 2024.<sup>34</sup> In sum, there has been extensive opportunities for active public participation, stretching for almost a decade from the City's first CDP action, through the Commission's 2023 CDP approval and the City's stakeholder group (a group that

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<sup>30</sup> As detailed by the U.S. Department of Housing and Urban Development in its 2023 Annual Homeless Assessment Report to Congress.

<sup>31</sup> See U.S. Census Bureau QuickFacts: Santa Cruz City, California.

<sup>32</sup> Santa Cruz County regularly conducts what is known as a "point-in-time" count of unhoused individuals, the last of which occurred between 430am and 10am on February 23, 2023, where 1,804 individuals were identified Countywide, and 1,028 in the City of Santa Cruz ("Santa Cruz County Homeless Count & Survey Comprehensive Report 2023", by Applied Survey Research).

<sup>33</sup> While the Appellants contend that stakeholder group members that are opposed to the program felt ignored and their comments not reflected nor addressed, the City respectfully disagrees. The City points to documentation of stakeholder feedback (including providing individualized responses to questions and concerns); has indeed incorporated some of their recommended changes into the project while correspondingly not incorporated some of the recommended changes from those that support the program (see discussion on pages 16-17); has proposed to continue and improve these meetings and solicit feedback from safe parking program participants; and the City currently provides an online forum whereby anyone may submit feedback.

<sup>34</sup> Commission staff also met with the Appellant groups, including representatives from ACLU, DRA, and SCC, on February 29, 2024 prior to City CDP approval in order to better understand their issues and concerns, to provide Commission staff's perspectives, and to explain the CDP approval/appeals process.

included the Appellants) that formed in response to that approval, and now as part of the program authorized by the City's current CDP approval.

In terms of substantive concerns, the question becomes whether the project would result in disproportionate adverse coastal resource impacts on the unhoused community, including those with disabilities, here expressed in terms of public access opportunities. In this case, public access concerns were raised due to the impact that restricting oversized vehicle parking would have on unhoused (including disabled) individuals who must navigate to and from safe parking sites on a daily basis, and who may also face disability- or cost-related challenges that make accessing the coast more difficult. As discussed previously in the "Public Access" section of this report, while the Coastal Act requires that public recreational access opportunities be maximized (which, the City-approved project can be understood as increasing general public access opportunities, as well as better addressing coastal resource concerns related to using streets as housing spaces), 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.

As described in the prior findings above, the overall public access impact is relatively small at night, and parking impacts (i.e., the displacement of oversized vehicles) are mitigated through the improved implementation of the safe parking program. 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 hours of midnight and 5am, and providing alternative parking sites equipped with resources for longer-term stays (including trash, hygiene/restroom, etc.). These resources are critical to improve the health and safety of unhoused individuals with disabilities. Importantly, the City has continued to improve upon its outreach for the safe parking program (including making modifications based on stakeholder and participant feedback to make such outreach clear and accessible) and has an ongoing reasonable accommodations process whereby individuals in the safe parking program may request such accommodations.<sup>35</sup> Additionally, per the California Vehicle Code,<sup>36</sup> individuals with a valid disabled person or disabled veteran special license plate and/or placard may park at any on-street metered parking space free of

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<sup>35</sup> The City's reasonable accommodations process includes a website, phone number, and email by which individuals may contact the City to make a request. While the City has committed to conducting proactive outreach to safe parking participants and oversized vehicle users, the City has stated they are limited in terms of asking an individual whether they do or do not have a disability, and thus rely on the reasonable accommodations process to make such allowances.

<sup>36</sup> See California Vehicle Code Section 22511.5.

charge and are not subject to local City ordinances<sup>37,38</sup>. In other words, the City's position is that individuals with a valid disabled license plate or placard are exempt from the oversized vehicle parking restrictions and may park overnight on City streets without incurring citations (for up to 72 hours at a time). Thus, in terms of parking options for individuals with disabilities, they have the option of utilizing the free safe overnight parking program or using their valid disabled license plate and/or displaying their placard to park in on-street parking spaces.<sup>39</sup> The Appellants contend that the enforcement of the ordinance since its adoption has been excessive – nearly 200 citations in the first two months of the overnight restrictions being enforced. The City responds that nearly half of those citations were automatically waived, as the City automatically waives first-time citations, and the City indicates that they have continued to waive citations in excess of first time offenders on a case-by-case basis (including for individuals with disabilities with multiple citations). Though not without its challenges, the City's safe parking portion of the program is a marked improvement from the City's previous iterations of this project from 2016 and 2022, as previously described, including as it provides complementary program elements that are designed to provide support services for unhoused individuals (e.g., assistance in applying to housing programs, obtaining health insurance, finding mental health services, etc.)<sup>40</sup> and the City has continued to improve upon the program over the first year of implementation and indicates that they plan to continue to adapt the program based on feedback received and lessons learned.

Thus, the Commission does not believe that this program is without its challenges but recognizes that the City is taking its obligations seriously in a good faith attempt to holistically tackle these complex social and coastal resource issues.<sup>41</sup> The Commission

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<sup>37</sup> For example, a local ordinance may restrict parking on streets to only residents who obtain a valid residential permit. Such a restriction would not apply to vehicles that display a valid disabled license plate and/or placard. As applied to this case, the City enacted an ordinance to restrict nighttime parking for oversized vehicles, but this restriction would not apply to those vehicles with a valid disabled license plate and/or placard.

<sup>38</sup> Specifically, the California Vehicle Code states "A disabled person or disabled veteran displaying special license plates... is allowed to park for unlimited periods in any of the following zones: (A) In any restricted zone... or on streets upon which preferential parking privileges and height limits have been given; or (B) In any parking zone that is restricted to the length of time parking is permitted as indicated by a sign erected pursuant to a local ordinance." Such provisions do not supersede state law which prevents vehicles from parking for more than 72 consecutive hours in the same space (see City of Santa Cruz Municipal Code 10.40.050).

<sup>39</sup> Such an exemption that allows for individuals with disabilities to park in on-street parking spaces free of charge does not apply to off-street parking lots.

<sup>40</sup> It should also be noted that there are a host of other public and private programs available in addition to the City's proposal here. For example, the Association of Faith Communities' (AFC) church parking program provides another 20 parking spots in the City. AFC refers to its program as the "Safe Spaces Parking Program", and hosts free overnight vehicles stays for unhoused individuals that sleep in their vehicles.

<sup>41</sup> The Commission also acknowledges that the City is committed to a host of other programs to address homelessness and broader social issues. In addition to this safe parking program, the City has, among other things, established a Community Advisory Committee on Homelessness, developed a number of affordable housing projects, and helped to fund various homelessness response efforts, including

supports local governments and other agency partners in their efforts to address the ongoing homelessness epidemic and better serve and provide services/resources to persons experiencing homelessness. In this instance, while there will always be ways to improve the program based on continuing feedback, emphasizing the voices of those most impacted, and additional sources of funding, the City's comprehensive safe parking program can continue to help mitigate the potential disproportionate public recreational access impacts that unhoused individuals – including those with disabilities – may experience. This program is the City's response to the identified and documented public safety, public health, and coastal resource issues that have arisen from long-term parking of oversized vehicles for habitation on public streets that are not equipped for such uses. The resulting disproportionate impacts on unhoused populations stemming from the lack of affordable housing or adequate social services are also being addressed by the City, partially through this project's safe parking program and its other programs.

Ultimately, these environmental justice issues amplify the public access issues (limited as they are, as detailed in the previous section), and though important for the City to continuously approve, such issues do not rise to the level of a substantial issue in terms of LCP consistency or Coastal Act public access consistency, the legal standard of review for this appeal. In making such a finding, the Commission takes seriously its evaluation of the issues affecting those who might need to sleep in their vehicles at night in Santa Cruz. On the contrary, such an outcome is a terrible and tragic circumstance, and an issue of concern not only in Santa Cruz, but also in other coastal communities and to all who enjoy the State's coastal zone. However, such situations are a function of other societal issues, and not so much an issue of impeded public access, and frankly fall outside the purview of the Commission's coastal resource protection mandates. In fact, much of the crises facing the unhoused community that use their vehicles (oversized or not) to sleep at night relate to broader social services and socioeconomic conditions that are better addressed by local governments and other applicable agencies under their power to regulate for public health, safety, and welfare. The Commission strongly supports local governments and other agency partners in finding solutions to these kinds of problems, but the ability of the Commission to offset consequences due to non-coastal resource concerns is simply beyond this agency's authority.

### **3. Conclusion**

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP and/or Coastal Act public access conformity such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise 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

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providing monetary support to shelter programs. The City is also actively collaborating with Santa Cruz County and other local cities to identify new locations for sheltering, as well as developing a more robust waste disposal and hygiene program for the unhoused, including with respect to blackwater tanks.

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 project over the first year of its implementation and conditioned the project accordingly based on lessons learned and to be consistent with the Commission's previous approval of the project. Over the many years of efforts to implement the program, the City has demonstrated a coastal resource need for such a project, here in terms of public safety, public nuisance, and coastal resource degradation, 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 limited. It only applies to oversized vehicles parking in the coastal zone between the hours of midnight and 5am, which is not a time of significant public access pursuits in the City of Santa Cruz, and provides exemptions for oversized vehicle users with disabilities. Thus, the second factor weighs heavily towards no substantial issue.

In terms of the significance of the coastal resources affected by the City's decision, public access and recreation on the coast are paramount concerns of both the Coastal Act and the LCP. However, for the reasons explained above, the ordinance will have minimal impact on public access, and arguably an increase in public access by turning over parking spots for other members of the public, and the City has taken committed to improving aspects of the program that may result in disproportionate public access impacts on affected environmental justice communities, 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 as to whether the appeal raises issues of local versus regional/statewide

significance, the issues raised are of statewide concern related to unhoused individuals, to be sure, but not so much statewide concerns attributable to coastal resources. The fifth factor 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-24-0012 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 Documents<sup>42</sup>**

- Commission CDP Files for A-3-STC-07-057 (West Cliff Drive Parking Restrictions), 3-20-0088 (Beach Management Plan), and A-3-STC-22-0018 (Nighttime Oversized Vehicle Parking Restrictions)

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

- City of Santa Cruz Planning and Community Development Department
- American Civil Liberties Union
- Disability Rights Advocates
- Santa Cruz Cares

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<sup>42</sup> These documents are available for review from the Commission’s Central Coast District office.