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Hearing Date: 9/12/2024

STAFF REPORT SUBSTANTIAL ISSUE & CDP DETERMINATION

Appeal Number: A-3-STC-24-0016

Applicant: SCFS Venture LLC

Appellants: Commissioners Justin Cummings and Ann Notthoff, UNITE HERE Local 19, and Joy Schendledecker

Local Government: City of Santa Cruz

Local Decision: City of Santa Cruz Coastal Development Permit CP21-0051 approved by the City Council on March 26, 2024.

Project Location: An approximately 1-acre site at the northeast corner of Front and Laurel streets and adjacent to the San Lorenzo River at 302, 310, 314, 322, 324, 326, and 328 Front Street (APNs 005-151-29, -34, -35, -43, -48, and -51) in the City of Santa Cruz, Santa Cruz County.

Project Description: Demolition of an existing commercial building; lot merger and boundary adjustment to consolidate six existing parcels into two (one private parcel and one public parcel); construction of a new six-story, 232-room hotel with related development (e.g., a rooftop pool, a spa and fitness center, restaurant/bar, cafe, banquet/meeting rooms, underground parking garage, retail space, and riverwalk amenities (including a publicly accessible outdoor extension area with tables, chairs, and benches, and a public restroom)) totaling approximately 154,000 square feet; construction of a linear public promenade between Front Street and the riverwalk; and related development.

Staff Recommendation: Substantial Issue Exists; Approval with Conditions

IMPORTANT HEARING PROCEDURAL NOTE

Please note that at the hearing for this item the Commission will not take testimony on staff's substantial issue recommendation unless at least three Commissioners request it. Commissioners may ask questions of the Applicant, aggrieved persons (i.e., generally persons who participated in some way in the local permitting process), the Attorney General, the Executive Director, and their proxies/representatives prior to determining whether or not to take such testimony. If the Commission does decide to take such testimony, then it is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify those time limits). Only the Applicant, aggrieved persons, 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 it will then review that application immediately following that determination (unless that portion of the hearing is postponed), 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

On March 26, 2024, the City of Santa Cruz City Council approved a CDP for the development of a six story, 232-room hotel facility at a roughly one-acre site in the downtown area and adjacent to the San Lorenzo River in Santa Cruz. The appeals contend that the City's approval of the CDP raises questions regarding its consistency with City Local Coastal Program (LCP) provisions and Coastal Act public access provisions related to lower cost visitor accommodations, affordable housing, public access, traffic and parking, public views, flooding and geologic hazards, water quality, and biological resources.

After thoroughly reviewing the local record in light of applicable Coastal Act and LCP provisions and the substantive issues raised, staff recommends that the Commission find that the appeals raise substantial Coastal Act/LCP conformance issues, and thus that the Commission take jurisdiction over the CDP application for the proposed project. Staff further recommends that the Commission, after public hearing, approve a conditioned CDP for the hotel project that appropriately addresses the applicable Coastal Act and LCP requirements.

The proposed project plays a key role in realizing a long-held goal for the downtown area by providing for a full-service hotel in a neighborhood that currently does not have one. The City has, in recent years, made a concerted effort to address its chronic housing shortage by significantly infilling and upzoning properties in and around its downtown. The Commission has been a partner with the City in doing so, including approving changes to its LCP Downtown Plan to facilitate such housing and infrastructure improvements. The results of such planning and visioning are that nearly 1,400 housing units either proposed, entitled, and/or under construction in the downtown area (533 of which are affordable), and this housing complements an already rich mix of visitor-serving commercial, parks/public spaces, offices, and restaurants that

make downtown Santa Cruz a regional draw. One of the missing pieces to this mix is a hotel. Commission staff have supported the City's visioning and have welcomed the concept of a new hotel at this particular site, and the Commission approved an amendment to the City's LCP in December 2023 to help facilitate it, including by identifying the specific development parameters that would make a hotel here inclusive for the community and visitors, such as by providing for lower cost accommodations and a series of public infrastructure improvements to better activate the adjacent San Lorenzo Riverfront with the City's downtown core. The importance of a downtown hotel overall, and the importance of this particular site given its prime location at the corner of two main City streets and adjacent to the San Lorenzo Riverwalk (a public pedestrian trail atop the San Lorenzo River levee) and the newly reimagined Santa Cruz Metro Center public transportation hub, all serve to define it as a true 'gateway' site of immense importance to the City. It was therefore key to ensure that any proposed development here respects and responds to the needs of the City and the LCP's requirements.

As described in detail in this report, the project ultimately approved by the City is largely responsive to these overarching goals and includes an extensive public benefits package that can be found consistent with the LCP on numerous points, including with respect to basic site planning (building height, setbacks, parking, etc.), required affordable housing contributions (an almost \$750,000 contribution to the City's affordable housing trust fund and the creation of four off-site affordable workforce housing units for hotel employees), public access and transportation requirements (construction of a new 50-foot-wide Maple Alley public 'paseo' to connect Front Street with the Riverwalk, a new 10,000 square foot Riverwalk extension area, widened and landscaped sidewalks along Front and Laurel Streets, free 90-minute bike rentals for the general public, and contributions to the City's downtown/beach shuttle), and overall design and integration into the downtown fabric. Again, the project would fulfill a longstanding City goal to construct a full-service hotel in the downtown area so as to complement its existing mix of retail, restaurant, visitor-serving commercial, office, and, increasingly, residential uses.

The primary substantive LCP compliance question with the City's approval is regarding lower cost accommodations. As explained in detail in the Substantial Issue section of this report, the City's CDP approval does not adequately address lower cost overnight accommodation issues particularly because the project is comprised of some 232 rooms, all of which are high cost, and did not include any on-site lower cost rooms, and because the City's required in-lieu fee (some \$5 million meant to go to a proposed lower cost cabins project at Greyhound Rock County Park in the County's North Coast) is significantly lower than what a project of this scope and scale would require. Because the hotel would be rather large with 232 rooms and in a prime downtown Santa Cruz location walkable to the beach, its lack of any on-site lower cost units raises significant Coastal Act and LCP conformance issues warranting the Commission to review the project more closely. The Commission has been steadily trending towards preferring on-site lower cost units as a key part of any proposed lower cost package. And for large hotel projects like this one, where there is a certain economy of scale and flexibility to provide for some level of on-site lower cost units, it is becoming more of an expectation to do so. In short, while the majority of the project's components can be found LCP

compliant, the project's lower cost requirements do not, and raise a substantial Coastal Act and LCP compliance issue.

Fortunately, Commission staff had a willing partner in the Applicant to make project changes that address and respond to these lower cost accommodations issues. The end result of this collaborative process is the revised project proposal, including as proposed to be conditioned on de novo review.

The revised project generally maintains the overarching premise of the City-approved version, including that it is comprised of a hotel facility and includes all of the previously described elements (affordable housing contributions, public access/infrastructure improvements, etc.), but includes fewer hotel units at some 190 units (down from 232). The primary change is to respond to lower cost accommodations requirements, and to do so the Applicant has proposed a significant lower cost overnight accommodations package which includes on-site components, off-site components, and an in-lieu fee. The package includes 20 lower cost standard hotel rooms within the hotel itself, where the cost would be no more than 75% of the statewide peak season average (inclusive of parking, resort fees, and any other hotel charges), which, as of 2024, is \$150. The package also includes a \$5 million in-lieu fee to be allocated for the County's Greyhound Rock project to develop between 12-16 lower cost cabins and other public access amenities at the site. Further, the package includes four off-site housing units to be allocated to hotel workers for a minimum of twenty years and rented at a price equivalent to no more than 30% of their gross income. The package also includes a hotel worker discount/voucher program, which would provide hotel rooms at lower cost rates to full-time hotel employees. The package also includes a one-time \$50,000 contribution to the Santa Cruz Hostel Society for needed improvements at its hostel facility near the beach. Finally, the package also includes a commitment to group programming, whereby the Applicant proposes to bring lower income youth, school groups, and other underrepresented communities to the hotel for at least 150 room-nights (where one room-night is when one of the hotel's otherwise higher-cost/market rate double-occupancy rooms is used for one night for lower cost overnight programming) per year, which would be capped at the cost to operate such rooms without profit (estimated to be approximately \$80 per room per night as of 2024). For both the lower cost rooms and the lower cost overnight programming, a notice or disclaimer will be included on the hotel's booking website, which will alert customers that such rooms and programming are intended to be utilized by lower income visitors to the coast, and the Applicant will undertake accompanying targeted outreach to nearby communities for these programs/offerings.

As explained in detail in this report, it is important to take full advantage of these limited opportunities when such lower cost units and opportunities can be accommodated – and accommodated on-site. This project thus provides an important opportunity to provide for a mix of lower cost amenities to serve various users, including families, singles/couples, and groups, and should help to further public coastal access, lower cost accommodations, and environmental justice objectives, and to help to truly work towards 'access for all'.

In conclusion, staff acknowledges the project's complexity, constraints, and challenges, especially related to addressing lower cost overnight accommodation issues, and further acknowledges that the end product with its meaningful lower cost accommodation package paired with rather generous and significant community and public benefits contributions can be looked to as an example for future projects to follow. Staff also acknowledges the Applicant's patience and willingness to thoughtfully engage on the issues, and notes that the Applicant is in full agreement with the staff recommendation. Ultimately, staff believes that the end result is a project that appropriately addresses Coastal Act and LCP requirements in a way that should provide a welcome and important addition to the City. As such, staff recommends the Commission approve a conditioned CDP for the revised project, for which the motions and resolutions to do so are found on **page 7**.

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EXHIBITS

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Exhibit 3: City of Santa Cruz Final Local Action Notice and Purchase Agreement

Exhibit 4: Project Plans

Exhibit 5: Appeals of City CDP Action

Exhibit 6: Table LCP-2 “General Plan Coastal Land Use Policies, Programs,
Implementing Regulations, Maps and Tables”

EX PARTE COMMUNICATIONS

1. MOTION AND RESOLUTION

A. Substantial Issue Determination

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeals were filed. A finding of substantial issue would bring the CDP application for the proposed development under the jurisdiction of the Commission for a de novo hearing and action. To implement this recommendation, staff recommends a **no** vote on the following motion. Failure of this motion will result in a de novo hearing on the CDP application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of no substantial issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission determine that Appeal Number A-3-STC-24-0016 raises no substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act, and I recommend a no vote.*

Resolution to Find Substantial Issue: *The Commission hereby finds that Appeal Number A-3-STC-24-0016 presents a substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act regarding consistency with the certified City of Santa Cruz Local Coastal Program and/or the public access provisions of the Coastal Act.*

B. CDP Determination

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

Motion: *I move that the Commission approve Coastal Development Permit Number A-3-STC-24-0016 pursuant to the staff recommendation, and I recommend a yes vote.*

Resolution to Approve CDP: *The Commission hereby approves Coastal Development Permit Number A-3-STC-24-0016 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity to with the City of Santa Cruz Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

2. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

3. SPECIAL CONDITIONS

This CDP is granted subject to the following special conditions:

1. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two full size paper sets and one electronic set of Revised Final Plans to the Executive Director for review and written approval. The Plans shall be prepared by a licensed professional or professionals (i.e., architect, surveyor, geotechnical engineer, etc.), shall be based on current professionally surveyed topographic elevations for the entire site, shall include a graphic scale, and shall be accompanied by documentation clearly demonstrating compliance with all aspects of this condition. The Revised Final Plans shall be substantially in conformance with the proposed plans (titled "The Cruz Hotel" dated prepared April 12, 2021 and updated July 6, 2021 by BCV Architecture and Interiors, and dated received in the Coastal Commission's Central Coast District Office on April 2, 2024), but shall be modified to meet the following requirements and incorporate all of the following special conditions:
 - a. **Rooms/Parking.** The total number of hotel rooms inclusive of the lower cost rooms, market rate rooms, and family suites shall be reduced to 190, and one floor of underground parking shall be eliminated.
 - b. **Design.** All development shall incorporate architectural details, varied materials, building offsets, and other such building elements to avoid a box-like appearance, including as seen from pedestrian scale. Variations in wall planes,

detailing, materials, and siding shall be used to create interest and promote variations, including between adjacent buildings. Roof styles and roof lines shall match, unless differences better protect public views. Exterior development shall complement building development and help provide visual transition to taller shapes. All surfaces shall use/effectively mimic natural materials and colors and be sited and designed to help reduce perceived mass and scale, and to best integrate seamlessly into the coastal environment and required landscaping at maturity; garish and/or bright colors shall be prohibited.

- c. Water Conservation.** All interior and exterior water-using fixtures, appliances, equipment, irrigation infrastructure, and other such components (e.g., faucets, toilets, showers, ice machines, dishwashers, irrigation etc.) shall be certified for low-flow (or ultra-low flow) and high-water efficiency use, and water conservation measures (e.g., easily accessible shut off valves, recirculating pumps, drip and/or micro-spray irrigation, etc.) shall be applied to the maximum extent feasible.
- d. Landscaping.** All existing landscaping shall be removed; new landscaping shall be planted and maintained in all site areas not covered in hardscape, where the landscaping shall use species (at maturity) and topographic relief that can provide for screening and softening of all development in public views as much as possible. All landscaping shall consist of low water-using, locally sourced, native, non-invasive species appropriate to the Santa Cruz/San Lorenzo River area, and shall be maintained in a litter-free, weed-free, and healthy growing condition (including through replanting and/or remediation to achieve consistency with this condition). No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist on the site.
- e. Irrigation.** All irrigation systems shall limit potable water use to the maximum extent feasible, including via using greywater as much as possible and using irrigation measures designed to facilitate reduced water use overall (e.g., micro-spray and drip irrigation, weather-based irrigation controllers, etc.). Irrigation system components shall be hidden from view as much as possible.
- f. Lighting.** Exterior lighting shall be wildlife-friendly, shall use lamps that minimize the blue end of the visible spectrum, and shall be limited to the maximum extent feasible to the minimum lighting necessary for safe ingress, egress, and use purposes. All lighting (exterior and interior) shall be sited and designed so that it limits the amount of light or glare visible from both public viewing and natural (e.g., San Lorenzo River, etc.) areas to the maximum extent feasible (i.e., through using the lowest luminosity possible, directing lighting downward and away from public and natural areas, shielding bulbs/light sources from view, prohibiting lighting that blinks or flashes, etc.). Lighting that does not meet the aforementioned parameters shall be prohibited.
- g. Windows and Other Surfaces.** All windows shall be non-glare glass, all other

surfaces shall be similarly treated to avoid reflecting light, and all windows on building exteriors within 40 feet of finished grade and facing the San Lorenzo River shall be bird-safe (i.e., windows shall be frosted, partially frosted, or otherwise treated with visually permeable barriers that are designed to prevent bird strikes).

- h. Utilities.** All utilities (e.g., sewer, water, stormwater, gas, electrical, telephone, data, etc.) shall be clearly identified (including the manner in which they will connect to offsite distribution networks) and shall be located underground, and any existing overhead utilities on the site shall be removed.
- i. Stormwater and Drainage.** All stormwater, drainage, and related water quality infrastructure (e.g., pervious pavements, etc.), with preference given to natural BMPs (e.g., bioswales, vegetated filter strips, etc.), shall be clearly identified. All project area stormwater and drainage shall be filtered and treated to remove expected pollutants prior to discharge and/or direction to offsite areas; shall retain runoff from the project onsite to the maximum extent feasible (e.g., through the use of pervious areas, percolation pits, engineered storm drain systems, etc.); shall be sized and designed to accommodate runoff from the site produced from each and every storm event up to and including the 85th percentile 24-hour runoff event; shall, in extreme storm situations (i.e., greater than the 85th percentile 24-hour runoff event storm) where such runoff cannot be adequately accommodated on-site through the project's stormwater and drainage infrastructure, ensure that any excess runoff is conveyed off-site in a non-erosive manner; and shall be permanently operated and maintained (where all maintenance parameters for such infrastructure, including based on manufacturers recommendations, shall be provided), where all such operation and maintenance activities shall be documented and shall be provided upon Executive Director request.
- j. Signs.** All signs and related project components shall be identified (including details showing their location, materials, design, and text), and all sign development shall be sited and designed: (1) to limit the number and visibility of all signs; (2) to minimize visibility in public views; (3) to seamlessly integrate into the surrounding environment to the maximum extent feasible (e.g., using natural materials, earth tone colors and graphics, etc.); (4) to limit lighting as much as possible (and be consistent with the lighting requirements specified in Special Condition 1(e) at a minimum); and (5) to be subordinate to the project setting, all to the maximum extent feasible.
- k. Lower Cost Rooms.** The Permittee shall provide 20 lower cost rooms where each such room shall be at least 250 square feet and shall have either one or two beds sized at least as large as a queen or two twins, respectively, a full-sized bathroom, and at least a mini-fridge and microwave. The lower cost rooms and related facilities (e.g., entrances, common areas, etc.) shall be effectively integrated into the overall hotel layout.

- l. Family Suites.** The Permittee shall provide at least six 'family suite' hotel rooms that are designed to accommodate families of at least four people, where the rooms shall at a minimum include at least 3 beds, kitchenette facilities (refrigerator, microwave, kitchen sink, dishes, and two hot plates/stovetop burners), and an enclosed restroom.
- m. Site Access.** Any areas of the site for which specific requirements for access are necessary shall be identified (i.e., employee only, paying customers only, overnight guests only, etc.), where other areas shall be allowed general public access (see also Special Condition 3 for additional detail).
- n. Public Access Requirements.** All public access areas (including but not limited to general public access to the expanded San Lorenzo Riverwalk, public paseo, public bathroom, paths, etc.) and amenities (e.g., bench seating, bike racks, signs, educational kiosk, bike share/rentals, etc.) associated with the approved Public Access Management Plan (see Special Condition 3) shall be identified.
- o. Construction Requirements.** All construction requirements associated with the approved Construction Plan (see Special Condition 2) shall be identified as "Required Construction Measures".

All requirements above and all requirements of the approved Revised Final Plans shall be enforceable components of this CDP, and the Permittee shall undertake development in accordance with this condition and the approved Revised Final Plans.

- 2. Construction Plan.** PRIOR TO CONSTRUCTION, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and written approval. The Construction Plan shall, at a minimum, include the following:
 - a. Construction Areas.** All construction activity, staging, storage, and access corridor areas shall be clearly identified in site plan view, where construction areas shall be minimized to the maximum extent feasible, and shall be sited and designed to have the least impact on coastal resources (including by using on-site areas for these purposes unless it is impossible to do so). Construction, including but not limited to construction activities and materials and equipment storage, shall be prohibited outside of such defined construction areas. Special attention shall be given to siting and designing construction areas to minimize impacts on the ambiance and aesthetic values of the San Lorenzo Riverwalk.
 - b. Construction Methods.** All construction methods to be used, including all methods to be used to keep the construction areas separate from public recreational use areas as much as possible (including using unobtrusive temporary fencing or equivalent measures to delineate construction areas), and including verification that operation and storage of equipment and materials will not, to the maximum extent feasible, significantly degrade public access and public views during construction, shall be clearly identified. Special attention shall be given to using construction methods that will minimize impacts on the ambiance and aesthetic values of the San Lorenzo Riverwalk.

- c. Construction Timing/Lighting.** Construction shall avoid weekends from Memorial Day weekend until Labor Day, state holidays, and between 10pm and 8am to the maximum extent feasible, and lighting of construction areas affecting public access and public view areas shall be prohibited, unless due to extenuating circumstances the Executive Director authorizes such work or lighting in writing, and subject to all measures determined by the Executive Director to be necessary to ensure maximum coastal resource protection.
- d. Construction BMPs.** All erosion control/water quality best management practices (BMPs) that will be implemented during construction to protect coastal water quality shall be clearly identified, including at a minimum all of the following:

 - a. Runoff Protection.** Silt fences, straw wattles, or equivalent apparatus shall be installed at the perimeter of the construction areas to prevent construction-related runoff and sediment from discharging from the construction areas or entering into storm drains or otherwise offsite or towards the river and ocean. Special attention shall be given to appropriate filtering and treating of all runoff, and all drainage points, including storm drains, shall be equipped with appropriate construction-related containment, filtration, and treatment equipment.
 - b. Equipment BMPs.** Equipment washing, refueling, and servicing shall take place at an appropriate on-site (or offsite and more inland, if more protective of coastal resources), hard-surfaced, level location where collection of materials is facilitated to help contain leaks and spills of hazardous materials to the project site.
 - c. Good Housekeeping BMPs.** The construction site shall maintain good construction housekeeping controls and procedures at all times (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the site; establish a hazardous materials spill response protocol, and maintain appropriate materials to address spills; etc.).
 - d. Erosion and Sediment Controls.** All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each workday.
- e. Archaeological/Tribal Cultural Resource Protection.** All archaeological/tribal cultural resource protection requirements identified in Special Condition 9 shall be identified as “Required Cultural Resource Protection Measures”.
- f. Property Owner Consent.** Clear evidence shall be provided indicating that the owners of any properties on which construction activities are to take place, including properties to be crossed in accessing the site, consent to such use of their properties and subject to the terms and conditions of this CDP.

- g. Construction Site Documents.** Copies of the signed CDP and the approved Construction Plan shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, as well as the public review requirements applicable to them, prior to commencement of construction.
- h. Construction Coordinator.** A construction coordinator shall be designated to be the main point of contact during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and the coordinator's contact information (i.e., address, phone numbers, email address, etc.) including, at a minimum, a telephone number and an email that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas while still minimizing impacts to public views, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the contact information (i.e., address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry. All complaints and all actions taken in response shall be summarized and provided to the Executive Director on at least a weekly basis during construction.
- i. Construction Specifications.** All construction specifications and materials shall include appropriate penalty provisions that require remediation for any work done inconsistent with the terms and conditions of the CDP.
- j. Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP, and the Permittee shall undertake construction in accordance with this condition and the approved Construction Plan.

- 3. Public Access Management Plan.** PRIOR TO CONSTRUCTION, the Permittee shall submit two copies of a Public Access Management Plan to the Executive Director for review and written approval. The Plan shall clearly describe the manner in which general public access associated with the approved development is to be provided and managed, with the objective of maximizing public access and recreational use of all available general public access areas and amenities (including restrooms, rooftop area (and access thereto), tower viewers, riverwalk-adjacent areas, paths, etc.) and all related areas and public access amenities (e.g., bench seating, bike racks, signs, bike share/rentals (free for first 90 minutes), free Wi-Fi, etc.) as described in this condition. The Plan shall be consistent with the approved

Revised Final Plans, and shall at a minimum include the following:

- a. Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described above and in this condition, shall be clearly identified as public (including with hatching and closed polygons so that it is clear what areas are available for public access use). At least one public restroom with easy, well-signed, and direct access from the riverwalk/riverwalk extension area shall be provided. The areas adjacent to the riverwalk and other appropriate access areas (such as the Maple Alley paseo) shall provide publicly available amenities, such as picnic tables, viewing benches/sitting areas, enclosed trash and recycling receptacles, doggie mitt stations, and/or other publicly available amenities commensurate with expected use and in a manner that maximizes their public utility and enjoyment. All public access areas and amenities shall be sited, designed, and operated to facilitate general public use and enjoyment, and appropriate measures shall be identified and applied to ensure that these areas appear as public, and do not appear as private and/or as areas/amenities that require one to be a paying hotel customer to use.
- b. Public Access Signs/Materials.** All signs and any other project elements that will be used to facilitate, manage, and provide public access to the approved development shall be clearly identified. Sign details showing the location, materials, design, and text of all public access signs shall be provided. The signs shall be sited and designed to provide clear information without impacting public views and site character. Signs shall include the California Coastal Trail and California Coastal Commission emblems and recognition of the Coastal Commission's role in providing public access at this location. All signs shall be sited and designed to maximize their utility and minimize their impacts on public views.
- c. Public Access Disruption Prohibited.** No development or use of the property governed by this CDP may disrupt and/or degrade public access or recreational use of any public access areas and amenities associated with the approved development, such as by setting aside areas for private uses or installing barriers to public access (e.g., furniture, planters, temporary structures, private use signs, fences, barriers, ropes, etc.). The public use areas shall be maintained consistent with the approved Plan and in a manner that maximizes public use and enjoyment.
- d. Public Access Use Hours/Fees.** All public access areas and amenities shall be available for general public access use at all times, except that the public restrooms may be closed between 9pm and 7am and the rooftop hours can be limited to the hours of operation. All public access areas and amenities shall be provided free of charge.
- e. Public Access Provided.** All public access areas and amenities shall be constructed/provided and made available for public use as soon as possible, and at least prior to hotel occupancy.

- f. Public Access Areas and Amenities Maintained.** All public access areas and amenities shall be constructed in a structurally sound manner, shall be sited and designed to maximize public use and enjoyment, and shall be maintained consistent with the terms and conditions of this CDP, including through ongoing repair and maintenance of all such public access improvements.

All requirements above and all requirements of the approved Public Access Management Plan shall be enforceable components of this CDP, and the Permittee shall undertake development in accordance with this condition and the approved Public Access Management Plan.

- 4. Lower Cost Overnight Accommodation Related Requirements.** The Permittee shall provide on-site lower cost rooms, in-lieu fees, workforce housing, worker discount program, underserved community programming, marketing and engagement, and monitoring consistent with the provisions of this condition that follow.

- a. Minimum On-Site Lower Cost Rooms.** The Permittee shall provide at least 20 standard double-occupancy lower cost hotel rooms,¹ where the cost to rent such rooms overnight shall not at any time exceed the Applicant's proposed lower cost threshold (which as of 2024 is \$150), and which may be adjusted no more than once per year to reflect any increases or decreases in the peak-season statewide ADR² and where the above costs shall be inclusive of all service and other fees (e.g., parking, cleaning, resort, administrative) but may be exclusive of any government-mandated fees (e.g., sales tax, transient occupancy taxes). All lower cost rooms and related facilities (e.g., entrances, common areas, etc.) shall be effectively integrated into the overall hotel layout in a way that maximizes their utility, shall be clearly identified on the Revised Final Plans (see Special Condition 1), and all lower cost room guests shall have access to all the same hotel amenities as all other hotel guests.

b. In-Lieu Fees.

- a. Santa Cruz Hostel.** PRIOR TO CONSTRUCTION, the Permittee shall pay an in-lieu fee of at least \$50,000 (which shall be increased annually in accordance with any increases in the California Construction Cost Index) to the Santa Cruz Hostel Society. The fee shall only be used for improvements and maintenance at the Carmelita Cottages Hostel complex, with preference for improvements that can increase rooms and/or beds and a secondary preference for maintenance that helps preserve the existing facilities and lower cost accommodations.

¹ Where each such room shall be at least 250 square feet and shall have either one or two beds sized at least as large as a queen or two twins, respectively, a full-sized bathroom, and at least a mini-fridge and microwave.

² The proposed Average Daily Rate (ADR) is based on 75% of the peak summer (July/August) rates for standard double-occupancy (2-person) rooms at hotels with the equivalent of AAA one- and two-diamond ratings.

- b. Greyhound Rock County Park Cabins.** PRIOR TO CONSTRUCTION, the Permittee shall pay an in-lieu fee of \$5,000,000 (which shall be subject to annual percentage increases in accordance with any increases in the California Construction Cost Index) to the City of Santa Cruz (the City). Upon the City receipt of the payment, the fee shall be timely deposited into an interest-bearing account to be established and managed by the City, where the funds in the account shall only be used to provide for lower cost overnight visitor accommodations in the Santa Cruz County coastal zone, with the preference for the funds to be used for new lower cost accommodations at Greyhound Rock County Park. If any funds remain in the account 7 years after the initial deposit, the funds may be directed elsewhere by the City if the Executive Director and City Manager make a written determination that the original intent of the in-lieu fee would be better utilized by reassigning the funds to public and/or non-profit entities providing lower cost overnight accommodations in the Santa Cruz County coastal zone.

Prior to expenditure of any funds, the Executive Director and the City Manager shall review and approve, in writing, the proposed use of the funds as being consistent with the intent and purpose of this condition, and the entity accepting the funds shall enter into a memorandum of understanding (MOU) with the Commission,³ which shall include, but not be limited to: a description of how the funds will be used; a requirement that any lower cost overnight accommodations created or supported by these funds will be maintained at lower cost rates for as long as the project approved herein by this CDP remains operational; an agreement that the entity accepting the funds will obtain all required authorizations (including a CDP in the coastal zone) for development associated with use of the funds; and a requirement for use of the funds to be consistent with this condition.

- c. Hotel Worker Discount Program/Reduced Rate Rooms.** PRIOR TO HOTEL OCCUPANCY, the Permittee shall submit to the Executive Director for review and written approval a plan to establish a hotel worker discount program. The intent of the program is to provide free or lower cost overnight access to the coast for all full-time employees and/or their families. The program shall specify the number of room nights that will be provided to all full-time employees either free of charge or at cost (\$80 per night as of 2024), which may be modified by no more than the increase in the California Consumer Price Index for Urban Consumers one time per calendar year, and shall not exceed the lower cost room rate for the 20 rooms as described above. The rate, if charged, shall be inclusive of all service and other fees (e.g., parking, cleaning, resort, administrative) but may be exclusive of any government-mandated fees (e.g., sales tax, transient occupancy taxes). Within 30 days of the hotel occupancy, the Permittee shall implement the program and advertise it to eligible employees.

³ If such funds are transferred to the State Coastal Conservancy and/or State Parks, then the funds shall be used pursuant to the existing MOUs between the Commission and the Conservancy (dated August 2018) and State Parks (dated June 2022), respectively.

- d. Underserved Communities Programming/Reduced Rate Rooms.** Market rate hotel rooms (i.e., one or more standard, double-occupancy hotel rooms that would otherwise charge market rates (i.e., not any of the above described 20 lower cost units)) shall be provided for at least 150 room nights per year at reduced rates for members of underserved communities, the intent of which is to provide overnight access to the coast to: (1) lower income communities, communities of color, and other communities that have been historically marginalized and face greater barriers to coastal access; (2) school groups, prioritizing those school groups from underserved communities; and (3) other entities and groups similar to the first two, including groups that have faced barriers to accessing coastal outdoor spaces and outdoor recreation opportunities. The cost to rent such rooms overnight shall not at any time exceed the Applicant's proposed reduced rate of \$80 per night (as of 2024), which rate may be modified by no more than the increase in the California Consumer Price Index for Urban Consumers one time per calendar year (e.g., in 2025, 2026, and so on), and where the rate shall be inclusive of all service and other fees (e.g., parking, cleaning, resort, administrative) but may be exclusive of any government-mandated fees (e.g., sales tax, transient occupancy taxes). The annual monitoring report specified in subsection (g) below shall include a detailed analysis of the previous year's programming (including the groups and number of people served, the rates charged, etc.), and shall include other information that can help to assess the effectiveness of the program in carrying out its objectives. The report shall also specify the programming efforts for the upcoming year, and any relevant changes necessary to improve upon its effectiveness.
- e. Workforce Housing Units.** By acceptance of this CDP, and as proposed by the Permittee, the Permittee agrees that no fewer than four workforce housing units shall be made available as affordable rental units to employees of the hotel authorized by this CDP on a first right of refusal basis for a period of at least 20 years. Such units shall be located within the City of Santa Cruz, with a preference for location in the downtown area. Rents shall be set such that the hotel employee would pay no more than 30% of their gross income toward rent. If all the hotel's employees choose to exercise their right of first refusal, then the workforce housing units shall be made available on a right of first refusal basis to employees of other overnight accommodation facilities located in the City of Santa Cruz with rents set such that hotel/motel/hostel worker would pay no more than 30% of their income. If all such hotel/overnight accommodation employees choose to exercise their rights of first refusal, then such units shall be made available to any very low- or low-income qualified households in the City of Santa Cruz.

PRIOR TO HOTEL OCCUPANCY, the Permittee shall provide to the Executive Director evidence of the recorded agreement required in Condition 29 of the City's approval (see **Exhibit 3** page 54) for the creation of the workforce housing units that addresses the process for determining income eligibility (as applicable), calculating rent, compliance monitoring, and all other required terms. In the event that the Permittee demonstrates that, despite good faith efforts, it is not feasible to implement the program described above prior to occupancy, the Permittee

may alternatively provide an in-lieu fee equivalent to the average construction cost of providing four affordable housing units, which shall be calculated based on the average production cost per unit of the three most recently completed affordable housing projects in the City of Santa Cruz, to be used for the creation of four workforce housing units in the City of Santa Cruz more broadly or new lower cost accommodations at Greyhound Rock County Park or another location in Santa Cruz County.

- f. Marketing and Engagement Plan.** The Permittee shall actively promote and publicize the availability of the lower cost on-site rooms and the underserved communities reduced rate on-site rooms, including specifically to underserved communities such as lower income communities, communities of color, and other communities that have been historically marginalized and face greater barriers to coastal access. PRIOR TO HOTEL OCCUPANCY, the Permittee shall provide a Marketing and Engagement Plan designed to accomplish the above-stated objective to the Executive Director for review and written approval, where the Plan shall at a minimum provide for the following:

 - a. Outreach.** All measures and avenues to be used to advertise, increase awareness of, and facilitate use of the lower cost on-site rooms and the underserved communities reduced rate on-site rooms shall be clearly identified. Promotional methods shall include, but are expected to not be limited to: hotel websites, press releases, and calendar listings; local media (e.g., Santa Cruz Sentinel, Lookout Santa Cruz) and ads on radio (e.g., local radio stations and others); print ads; social media (e.g., Facebook, Twitter/X, Instagram, TikTok); and contacts with community organizations who may be able to help facilitate awareness (e.g., non-profits, environmental justice groups, labor unions, recipients of public benefits programs (by coordinating with local program administrators)), as well as schools. The Plan shall identify sample language to be used in describing the availability and price for the lower cost on-site rooms and the underserved communities reduced rate on-site rooms (where said language shall be required to be consistent with the terms and conditions of this CDP), and shall provide a schedule for each type of outreach, with the goal being to reach as many potential users as possible, including audiences beyond the City of Santa Cruz that might not normally be reached through traditional and local means (e.g., communities such as Watsonville, Marina, Seaside, Del Rey Oaks, Castroville, Prunedale, Salinas, Gonzales, Gilroy, King City). The Plan shall also include a notice or disclaimer to be included on the project's booking website, where the notice shall alert customers that the lower cost rooms and the underserved communities reduced rate rooms are intended to be utilized by lower income visitors to the coast. All materials shall acknowledge the California Coastal Commission's and City of Santa Cruz's role in providing the lower cost on-site rooms and the underserved communities reduced rate on-site rooms.
 - b. Non-English Languages Provided.** All outreach described in this condition shall include a language-access element inclusive of non-English languages spoken in the targeted communities, including but not limited to Spanish,

tailored to be culturally relevant, and written in plain language to help prevent educational and cultural barriers to access to the lower cost rooms.

- c. Monitoring.** The Plan shall describe how the Permittee will monitor and track the Plan's execution so that the Permittee and the Coastal Commission can note the effectiveness of the Plan and make changes as needed.
- g. Reporting.** The Permittee shall provide an annual report (with the first report due by December 31st of the first year of hotel occupancy, and subsequent reports due by on December 31st of subsequent years) to the Executive Director for review and written approval that provides clear evidence of compliance with all aspects of this condition, including providing sufficient detail to demonstrate occupancy of and rates charged for the identified on-site rooms, implementation and use of the hotel worker program and the workforce housing units, and implementation of the approved Marketing and Engagement Plan (where the latter shall at least describe all outreach efforts, with samples of outreach materials; all implementation challenges and successes; and all feedback and public comments received, and any responses to same), and providing recommendations for additional and/or modified measures to enhance awareness, use, and public utility of all required measures specified in this condition. Every third such annual report shall also include an audit performed by an independent auditing company evaluating compliance with this condition.

All requirements above and all requirements of all above Executive Director approved plans/materials shall be enforceable components of this CDP, and the Permittee shall undertake development in accordance with this condition and all such approved plans/materials.

- 5. Other Public Benefits.** Consistent with the Permittee's proposal, this CDP requires all of the following:

 - a. Affordable Housing.** Prior to construction, the Permittee shall pay \$727,500 to the City of Santa Cruz's Affordable Housing Trust Fund.
 - b. Boys and Girls Club.** Prior to construction, the Permittee shall pay at least \$50,000 (which shall be increased annually in accordance with any increases in the California Construction Cost Index) to the Boys and Girls Club of Santa Cruz County.
 - c. Santa Cruz.** The Permittee shall pay at least \$10,000 per year (by December 31st of each year for a period of 10 years, starting in the first calendar year associated with hotel occupancy) to the City of Santa Cruz to be used solely for help funding the Santa Cruz beach and downtown shuttle bus operation.
 - d. Nonprofit Use.** At least three days per year, the Permittee shall allow hotel conference and rooftop facilities to be used free of cost by a local California registered nonprofit organization (e.g., Boys and Girls Club of Santa Cruz County, Nueva Vista Community Resources, and similar organizations).

The Permittee shall provide evidence to the Executive Director for review and written approval on a yearly basis (by December 31st of each year) that all requirements of this condition have been satisfied.

6. General Occupancy Requirements. By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:

a. Hotel Length of Stay Provisions. All overnight rooms shall be open and available for rental to the general public. Rooms shall not be rented to any individual, family, or group for more than 30 consecutive days, and not for more than 14 days between the Friday of Memorial Day weekend and Labor Day inclusive. No individual ownership or long-term occupancy of hotel rooms shall be allowed.

b. Conversion Prohibited. This CDP authorizes the construction and operation of a traditional hotel-style overnight product for transient occupancy only. The conversion of any of the overnight rooms to limited use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved development shall be prohibited.

7. Transportation Demand Management Plan. PRIOR TO HOTEL OCCUPANCY, the Permittee shall submit two copies of a Transportation Demand Management Plan to the Executive Director for review and written approval. The Plan shall be designed to maximize employee and guest travel commutes via non-single-occupant vehicle means, e.g. through use of shared vehicles/carpooling, transit, bicycle/pedestrian means, etc. The Permittee shall actively encourage employee and guest participation in alternative transportation trips/programs including providing information on the City's array of alternative transportation options, such as the Santa Cruz Beach shuttle, the City of Santa Cruz's Go Santa Cruz County transportation program (which includes unlimited free transit cards, free BCycle memberships, and rewards for those utilizing any method of alternative transportation including biking, carpooling, walking, and public transit with "Downtown Dollars" currency), the hotels' free bicycle rentals, etc.

The Plan shall provide for a commuter information area centrally located and accessible to all employees as a part of the approved project, in which employees are provided information on available transportation alternatives to the single-occupancy vehicle (i.e., current maps, routes and schedules for public transit, ridesharing match lists, available employee incentives, ridesharing promotional material supplied by commuter-oriented organizations, etc.). In addition, the Plan shall detail bicycle parking and shower/locker facilities for employee who walk/jog and/or bike to and from the workplace, including detailing the location and type of bicycle parking available (e.g., bicycle lockers, rooms, cages, etc.). All requirements above and all requirements of the approved Transportation Demand Management Plan shall be enforceable components of this CDP, and the Permittee shall undertake development in accordance with this condition and the approved Transportation Demand Management Plan.

- 8. Plastic Reduction Program.** PRIOR TO CONSTRUCTION, the Permittee shall submit two copies of a Plastics Reduction Program to the Executive Director for review and written approval. The Program shall minimize, to the maximum extent possible, the use of single-use plastics in all aspects of hotel operations, including as part of hotel room occupancy, conferences, restaurant/bar operations, etc. At a minimum, the Program shall meet any City requirements related to “Environmentally Acceptable Food Packaging” and the City of Santa Cruz “Bag Reduction Ordinance” and shall additionally identify/include the following provisions: educational signage for staff and guests promoting and encouraging reusable items instead of single-use plastics; maximizing use of reusable food ware for all dining purposes (for dinnerware, drinkware, silverware, and ramekins/containers), and prohibiting the following items: plastic straws (and allowing only reusable straws, paper straws, or straws made from naturally occurring materials, and only upon request), Styrofoam, plastic bags, plastic bottles, and plastic single-use shampoo/conditioner/lotion bottles in hotel rooms. The Program shall also provide water bottle refill stations (at a minimum in the lobby, conference area, pool area, and any other high-use areas). To the maximum extent possible, only biodegradable or compostable materials for single-use products shall be employed.
- 9. Protection of Archaeological and/or Tribal Cultural Resources.** The Permittee shall undertake the approved project in compliance with the following measures to protect archaeological and/or tribal cultural resources to the maximum extent feasible.
- a. Notification.** At least one month prior to commencement of any ground-disturbing construction activities, the Permittee shall (1) notify the representatives of Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list, including but not necessarily limited to the Amah Mutsen Tribe and Muwekma Ohlone Indian Tribe; (2) invite all Tribal representatives on that list to be present and to monitor ground-disturbing activities; and (3) arrange for any invited Tribal representative that requests to monitor and/or a qualified archaeological monitor to be present to observe project activities with the potential to impact archaeological and/or tribal cultural resources.
 - b. Monitoring.** A qualified, locally experienced archaeologist and a tribal monitor, approved by relevant tribe(s), shall be on site to monitor all activities with the potential to impact archaeological and/or tribal cultural resources, including all ground excavation/grading activities. The monitor(s) shall have experience monitoring for archaeological resources of the local area during excavation projects, be competent to identify significant resource types, and be aware of recommended tribal procedures for the inadvertent discovery of tribal cultural and/or archaeological resources and/or human remains.
 - c. Discovery Protocol.** If any tribal cultural deposits are discovered during the course of the project, all construction within 200 feet of such deposits shall cease and shall not re-commence until a qualified cultural resource specialist (which

could be a person identified in subpart (b), above), in consultation with the relevant tribe(s), analyzes the significance of the find and, if deemed significant, prepares a supplementary archaeological plan for the review and approval of the Executive Director that evaluates and provides suggested measures related to the discovery. The Executive Director shall review the plan and either: (1) approve it and determine that its recommended changes to the project or mitigation measures do not necessitate an amendment to this CDP, or (2) determine that the changes proposed therein necessitate a CDP amendment. The location of any and all identified archaeological and tribal cultural resources shall be kept confidential, and only those with a “need to know” shall be informed of their locations.

- d. Human Remains.** Should human remains be discovered on-site during the course of the project, immediately after such discovery, the on-site archaeologist and/or tribal monitor shall notify the Santa Cruz County Coroner within 24 hours of such discovery, and all construction activities shall be temporarily halted until the remains can be identified. If the County Coroner determines that the human remains are those of a Native American, the Coroner shall contact the NAHC within 24 hours, pursuant to Health and Safety Code Section 7050.5. The NAHC shall deem the Native American most likely descendant (MLD) to be invited to participate in the identification process pursuant to Public Resources Code Section 5097.98. The Permittee shall comply with the requirements of Section 5097.98 and work with the MLD person(s) to discuss and confer with the descendants all reasonable options regarding the descendants' preference for treatment. Within 5 calendar days of notification to NAHC, the Permittee shall notify the Coastal Commission's Executive Director of the discovery of human remains. The Executive Director shall maintain confidentiality regarding the presence of human remains on the project site.

10. Other Authorizations. PRIOR TO CONSTRUCTION, the Permittee shall provide to the Executive Director evidence of other required authorizations for, or alternatively evidence that no such authorizations are needed, for the development authorized by this CDP (e.g., from U.S. Army Corps of Engineers, Santa Cruz County Environmental Health Department, City of Santa Cruz, etc.). The Permittee shall inform the Executive Director of any changes to the project required by other agencies/entities, and such changes shall not be incorporated into the project until the Permittee obtains a Commission-approved amendment to this CDP, unless the Executive Director determines that an amendment is not legally required.

11. City of Santa Cruz Conditions. This CDP has no effect on conditions imposed by the City of Santa Cruz pursuant to an authority other than the Coastal Act, except as provided in this condition. The Permittee is responsible for compliance with all terms and conditions of this CDP in addition to any other requirements imposed by the City pursuant to the City's non-Coastal Act authority (e.g., the City's Design Permit, Building Permit, etc.). In the event of conflicts between terms and conditions imposed by the City and those of this CDP, the terms and conditions of this CDP shall prevail.

- 12. Future Permitting.** Any and all future proposed development related to this project, this project area, and/or this CDP shall be subject to the Coastal Commission's continuing CDP jurisdiction. This CDP authorizes limited future repair, maintenance, and/or improvement development that is determined by the Executive Director to: 1) fall within the overall scope and intent of this CDP; 2) be consistent with the City of Santa Cruz LCP; and 3) not have any significant adverse impacts to coastal resources. Any development that the Executive Director determines does not meet such criteria shall require a separate CDP or a CDP amendment, as directed by the Executive Director.
- 13. Minor Adjustments.** Minor adjustments to these special condition requirements, including to any Executive Director-approved plans, that do not require CDP amendments or new CDPs (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.
- 14. Liability for Costs and Attorneys' Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and/or (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of these CDPs, the interpretation and/or enforcement of CDP conditions, or any other matter related to these CDPs. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.
- 15. Deed Restriction.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and written approval documentation demonstrating that the landowners have executed and recorded against the properties governed by this CDP (i.e., APNs 005-151-29, -34, -35, -43, -48, and -51) a deed restriction, in a form and content acceptable to the Executive Director indicating that, pursuant to this CDP, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property, and that such terms and conditions shall be imposed as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of all of the properties governed by this CDP. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this CDP shall continue to restrict the use and enjoyment of the subject property so long as either this CDP or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.

4. FINDINGS AND DECLARATIONS

A. Project Location

The City-approved project is located on the corner of Front and Laurel streets (at 302, 310, 314, 322, 324, 326, and 328 Front Street) between Front Street and the San Lorenzo River in downtown Santa Cruz. The City-approved project is located entirely within the geographically identified area where City CDP decisions are appealable to the Coastal Commission, spanning six different parcels (APNs 005-151-29, -34, -35, -43, -48, and -51)⁴ presently occupied by an existing single-story commercial building (APN 005-151-51), a parking lot associated with the commercial building (APNs 005-151-43 and -29), one public parking lot (APNs 005-151-34 and -35), and an adjacent small public parcel primarily occupied by landscaping (APN 005-151-48), all spread across about an acre of land. The site includes approximately 370 feet of downtown street/river frontage (and about 125 feet of Laurel Street frontage) and generally spans the area between Laurel Street and the Downtown Metro Center. The site is designated Regional Visitor Commercial and zoned Central Business District (CBD) with a Floodplain Overlay (FP-O) and a Coastal Zone Overlay (CZ-O) and is surrounded by properties⁵ with the same CBD zoning to the north, west, and south, with the exception of the Metro Center, which is zoned Public Facilities (PF). As indicated, the San Lorenzo River is located immediately east and is separated from the site by the river levee (a largely earthen levee with a public access pathway (known as the “Riverwalk”) elevated approximately 10 feet above the grade of Front Street). The project site is within the LCP’s Downtown Plan area⁶ and specifically within that plan’s Front Street/Riverfront Corridor, and thus is subject to area-specific height, design, and community benefit requirements.

See **Exhibit 1** for a location map and **Exhibit 2** for site photos.

B. Project Description

The City-approved project would provide for the redevelopment of the entire one acre site, including demolition of the existing single-story commercial building, and clearing of existing pavement at the site. The City-approved project further provides for the construction of a new 232-room hotel with associated amenities, including ground floor retail space, an on-site restaurant/bar, a rooftop pool and bar, banquet/meeting rooms, a spa and fitness center, underground parking (consisting of 214 valet/stacked parking spaces), and bicycle parking (consisting of 68 Class 1 spaces and 56 Class 2 spaces located within the parking garage and/or along the perimeter of the project building). Vehicular access would be provided via a porte-cochre entrance on Front Street; the

⁴ 322 and 324 Front Street currently comprise one parcel (APN 005-151-51), hence why there are presently seven addresses and six parcels.

⁵ A significant number of these surrounding parcels have recently been redeveloped to construct new residential housing developments, including providing approximately 946 housing units of which 347 are affordable. These developments provide ground floor commercial space with residential on top.

⁶ The City of Santa Cruz’s LCP includes a series of area plans with specific standards and requirements unique to that area and the subject site falls within the Downtown Plan area. Amendments to the Downtown Plan were adopted by the Commission in December of 2023 (see LCP-3-STC-23-0045-2-Part A) including to clean up certain language, to improve clarity, and create more objective standards.

main hotel lobby, commercial retail space, hotel offices, and a café would also be accessible from Front Street. The floor above would include 6,775 square feet of banquet/meeting room space, a restaurant/bar, and a secondary main entrance connecting directly to the Riverwalk. Hotel rooms and the spa/fitness area would be provided on levels three through six. Finally, the rooftop would host a pool area consisting of three pools, lounge space, a bar, bathrooms, and mechanical equipment. All told, the proposed development would include nearly 36,242 square feet of enclosed and other useable space and would incorporate traditional midcentury elements, such as brick, plaster, and wood into its design.

The City-approved project also includes a 50-foot-wide public paseo⁷ (named “Maple Alley”) extending from Front Street to the Riverwalk, and expanded publicly accessible outdoor space between the project and the Riverwalk at the same elevation as the Riverwalk (i.e., the area between the project building and the levee would be converted into useable outdoor space available to the general public). The public paseo would be designed to accommodate moveable amphitheater seating to provide space for public gatherings, while the outdoor extension area between the building and the Riverwalk would provide further public gathering space, including tables, chairs, benches, and a flexible event lawn. The project proposes to improve pedestrian infrastructure adjacent to the project site, including new widened sidewalks on Front Street and Laurel Street, additional streetlights, new street trees, an extension of the Riverwalk pathway along Laurel Street, and a Class II bikeway along Front Street.

In addition, the City’s approval codified the Applicant’s proposal to provide a number of other community amenities and benefits as a part of the project. Specifically, the approved project would also provide:

- A one-time contribution of \$5 million to be used to fund a project at Greyhound Rock County Park in Northern Santa Cruz County that would entail public access improvements and the construction of cabins to be used both for educational overnight programming for underserved youth and lower cost overnight accommodations for the general public.
- A one-time financial contribution of \$50,000 to the Santa Cruz Hostel Society for deferred maintenance needs at their Carmelita Cottages facility to help preserve existing lower cost overnight accommodation options within the City of Santa Cruz. The money is intended to be used for water and fire related infrastructure upgrades, fence and roof improvements (for the Johnson and Dame Cottages), and heating system replacement (in Dame Cottage).
- A one-time financial contribution of \$50,000 to the Boys and Girls Clubs of Santa Cruz County.
- A yearly contribution of \$10,000 for a period of ten years to the City of Santa Cruz to help fund the City’s “Santa Cruz” downtown and beach shuttle program.

⁷ Called a ‘paseo’ by the City, this area is a public promenade space that is essentially a linear park of sorts.

- A one-time contribution of \$227,500 to be paid into the City's Affordable Housing Trust Fund (AHTF),^{8,9} as required by the LCP's Downtown Plan.
- An additional one-time voluntary contribution of \$500,000 to the City's AHTF.
- Four workforce housing rental units provided by the Applicant for at least 20 years for occupancy by hotel employees at a reduced rate, where rents for such units would be provided at lower cost,¹⁰ or an equivalent in-lieu fee if not feasible.¹¹
- Six on-site family suites designed to accommodate families of four or more.
- On-site tower viewers for the public to view the San Lorenzo River habitat.
- Free 90-minute public bike rentals for both hotel guests and the general public.
- Free public Wi-Fi at the Maple Alley paseo and outdoor Riverwalk area.
- Three community days per year for local non-profit organizations to use the hotel's rooftop facilities and/or conference facilities at cost.

See **Exhibit 4** for the City-approved project plans.

C. City of Santa Cruz CDP Approval

On February 15, 2024 the City of Santa Cruz Planning Commission reviewed the above-described project, and took action to recommended its approval to the City Council. Subsequently, the City Council approved a CDP for the proposed project, by a vote of 5-1, on March 26, 2024. The City's notice of that final CDP action was received

⁸ The purpose of the Affordable Housing Trust Fund (AHTF) is to assist in the creation and preservation of affordable housing in the City of Santa Cruz for the benefit of low- and moderate-income households. AHTF funds can be used for: the creation of new affordable units; preservation of existing affordable housing; assistance with multifamily rehabilitation programs; conversion of market rate units to affordable housing; construction of accessory dwelling units; acquisition and rehabilitation of potential limited equity cooperatives; first time homebuyer loans; and predevelopment loans/grants to assist nonprofit and for-profit developers with project feasibility studies, site acquisition and design studies for potential affordable housing projects. Historically, including the last few years, however, the City has focused funding on the creation and preservation of low-, very low-, and extremely low-income affordable units in the community. The most recent expenditures of AHTF funds were directed to: Pacific Station South, a 70-unit 100% affordable housing project; Pacific Station North, a 128-unit 100% affordable housing project; and the Downtown Library Affordable Housing Project, a 124-unit 100% affordable housing project. Pacific Station South is nearing completion, Pacific Station North broke ground in May 2024, and the groundbreaking for the Downtown Library Affordable Housing Project is anticipated April 2025. Pacific Station North and Pacific Station South, as well as a redevelopment of the Santa Cruz Metro Center (the County's primary public transportation hub), are kitty-corner to the project across Front Street.

⁹ The City has also directed the proceeds from the Applicant's purchase of City-owned property for the project, of some \$2,050,000, to the City's AHTF.

¹⁰ Equivalent to 30% of the employee's gross income.

¹¹ If the Applicant demonstrates that it is not feasible to provide for the workforce housing units prior to occupancy of the hotel, the City required the applicant to pay an in-lieu fee equivalent to the average construction cost of providing the four units (see Condition 29 on page 54 of **Exhibit 3**).

in the Coastal Commission's Central Coast District Office on April 2, 2024 (see **Exhibit 3**), and the Coastal Commission's ten-working-day appeal period for this action began on April 3, 2024 and concluded at 5 p.m. on April 16, 2024. Three valid appeals (discussed below) were received during the appeal period.¹²

D. Appeal Procedures

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

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

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

The Coastal Act and the Commission's implementing regulations are structured such that there is a presumption of a substantial issue when the Commission acts on this question, and the Commission generally considers a number of factors in making that

¹² It is noted that the City Council sought to amend the CDP on June 25, 2024. However, because the Coastal Act stays projects appealed to the Commission, that action was not legally permissible, and thus has no bearing on the City's original CDP approval, the original appeals of that original action to the Commission, and the Commission's consideration of this appeal.

determination.¹³ At this stage, the Commission may only consider issues brought up by the appeal. In reviewing the substantial issue question, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no such testimony is requested, a substantial issue is automatically found. In both cases, when the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, aggrieved persons, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

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

In the second phase of the appeal, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances, but ones that do not apply to this case, the Coastal Act's public access and recreation provisions). This step is often referred to as the "de novo" review phase of an appeal, and it entails reviewing the proposed project in total. There is no specific legal deadline for the Commission to act on the de novo phase of an appeal. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing (if applicable).

E. Summary of Appeal Contentions

The appeals contend that the City-approved project raises Coastal Act public access and LCP consistency questions relating to lower cost visitor accommodations, affordable housing fee requirements, public access, traffic, parking, views, flooding and

¹³ The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no substantial issue" (see California Code of Regulations, Title 14, Section 13115(b) (CCR)). CCR Section 13115(c) of the Commission's regulations provides, along with past Commission practice, that the Commission may consider the following five factors when determining if a local action raises a significant issue: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and the Coastal Act's public access provisions; (2) the extent and scope of the development; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

geologic hazards, air and water quality, ESHA, and CEQA compliance.¹⁴ Specifically, the appeals assert that the City-approved project would violate applicable provisions primarily because: 1) the project's lower cost overnight accommodation package is inadequate and instead 25% of the rooms onsite should fall within the lower cost overnight accommodations rate; 2) the required affordable housing fee is inadequate to offset the loss of potential housing units on the site; 3) the project does not provide "accessible, affordable housing and parking for the hotel's employees"; 4) the project fails to provide "meaningful, adequate public access" and "safe river recreation", and will adversely impact on-street parking, thereby impacting public recreational parking; 5) the project will impact scenic public views; and 6) the project would exacerbate flooding to adjacent low-lying residential neighborhoods and does not sufficiently mitigate potential earthquake/soil liquefaction threats. See **Exhibit 5** for the full text of the appeals.

F. Substantial Issue Determination

1. Lower Cost Overnight Accommodations

Applicable Coastal Act and LCP Provisions

The Coastal Act calls for the provision of maximum public recreational access opportunities, and also evinces a strong intent to ensure that lower cost visitor and recreational facilities are protected and provided along the coast, including lower cost overnight visitor accommodations, so as to ensure that the coastal zone is as accessible as possible to all, including the vast majority of the public who are not fortunate enough to live near the shoreline. Coastal Act Sections 30210 through 30224 specifically protect public access and recreation. In particular, Sections 30210 and 30213 state, in relevant part:

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

The twin Coastal Act mandates to maximize public access and recreational opportunities, and to provide lower cost visitor and recreational facilities where feasible, help to provide important context for considering a project such as the proposed hotel project. In particular, Section 30213 makes clear that lower cost facilities are important in the coastal zone, especially to help facilitate access for all, and especially for those

¹⁴ One Appellant makes a series of CEQA contentions, asserting that the City's CEQA exemption determination was inappropriate, and that the City should have completed an environmental impact report because the project will result in traffic impacts, increased vehicle miles traveled (VMTs), noise impacts, degraded air and river water quality, degraded habitat for fish and wildlife, and increased water demand. However, CEQA issues are not a proper basis for appeal, only Coastal Act public access and LCP provisions are, and thus CEQA contentions are not themselves considered further herein other than to the extent the underlying issue being raised can be tied to applicable LCP/Coastal Act requirements.

not fortunate enough to live along the immediate shoreline or near the beach. Importantly, Section 30210's direction to maximize public access and recreation opportunities represents a different threshold than to simply provide or protect such access, and is fundamentally different from other similar provisions in this respect. In other words, it is not enough to simply provide such opportunities, and not enough to simply protect such opportunities, but rather that such opportunities must also be maximized. This terminology distinguishes the Coastal Act in certain respects and provides fundamental direction to maximize public access and recreational opportunities with respect to projects along the California coast that raise such issues, like this one.

In implementing these Coastal Act provisions when applied to overnight accommodation cases, such as this, the Commission has focused on addressing the disparity between lower cost options when a higher cost hotel is proposed. In such cases, the Commission has historically required that at least 25% of the rooms be provided at lower cost rates (see also discussion below) as a means of meeting these twin Coastal Act mandates in that context.

Building upon this clear Coastal Act direction, the certified Local Coastal Program (LCP) Land Use Plan (LUP) includes a series of provisions derived from and meant to implement related Coastal Act lower cost access requirements (and Land Use Element Policy 3.5 requires access to be provided in a manner “consistent with the California Coastal Act”, including Section 30213, and Table LCP-2 explicitly identifies Coastal Act Section 30213 and identifies the plethora of LUP provisions which implement it; **see Exhibit 6**).¹⁵ The LUP broadly speaks to increasing the quantity and quality of overnight accommodations and visitor-serving attractions and amenities, while also recognizing the importance of preserving overnight accommodations accessible to persons of diverse socio-economic backgrounds:

LUP Land Use Element Policy 2.7.2: Improve the character and quality of visitor-serving commercial areas to encourage more off-season and overnight visits.

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

LUP Economic Development Element Policy 5.2: Encourage upgrades of existing hotel facilities and attract quality hotel and conference facilities in locations and scale appropriate to the City's character to enhance the quality of

¹⁵ Courts have held that LCP provisions must be understood in relation to the relevant Coastal Act section or sections from which LCP provisions derive their authority. See, for example, *McAllister v. Cal. Coastal Com'n* (2008) 169 Cal.App.4th 912, 930-932, which held that: “Although local governments are responsible for drafting the ‘precise content’ of their local coastal programs, those subdivisions must, at a minimum, conform to and not conflict with the resource management standards and policies of the [Coastal] Act,” and as such, any ambiguities must be interpreted as being consistent with the Coastal Act standards. This legal point can be traced to Section 30512(c) of the Coastal Act, which requires that an LUP “meet the requirements of, and is in conformity with, the policies of Chapter 3.”

visitor-serving areas and promote development of the conference tourism market.

LUP Economic Development Element Policy 5.2.2: *Investigate the attraction of a top-end, full-service hotel to expand and improve the year-round conference segment of the tourism market.*

LUP Economic Development Element Policy 5.5: *Work with the CVC and other groups to increase off-peak and off-season tourism by enhancing and promoting off-peak events, improve existing visitor attractions, expand the diversity of visitor attractions, and also emphasize the special features such as the natural environment...*

LUP Policy 2.7.2 speaks to encouraging all types of overnight visits, including for persons of less economic means, which thus extends to the need to address lower cost options when hotels such as this are considered in the City. LUP Policy 5.2 speaks to the need to attract quality hotel facilities to enhance the quality of visitor-serving areas and the quality of visitor-serving experiences, and thus also making sure all visitors can make use of such facilities, including those of lesser means. LUP Policy 5.5 refers to increasing off-peak and off-season tourism, where one obvious way to do that is by ensuring that lower cost options are provided. When understood in relation to the Coastal Act's directives to ensure that such facilities are meant to serve the diverse California populace (which are incorporated by reference in LUP Policy 3.5), it becomes clear that both the Coastal Act and LUP require new hotels to provide amenities and accommodations for the broader populace, including via lower cost means. The question then becomes how to do so, which is explained subsequently.

Background

Coastal Act Section 30213 has its origins in the 1975 California Coastal Plan (the precursor to the 1976 Coastal Act). Based on extensive public input in the early 1970s, the Coastal Plan found that few tourist facilities for persons of low and moderate income were being built in many parts of the coastal zone, and that many low- and moderate-cost facilities were being replaced by facilities that had higher costs, particularly in terms of overnight accommodations. The Coastal Act addressed these findings in part by including the specific Section 30213 mandate to protect, encourage and, where feasible, provide lower cost visitor and recreational facilities.

Over the years, ensuring the provision of lower cost overnight accommodations in the coastal zone has been especially important because market pressures have led developers to seek construction and operation of higher cost overnight accommodations on land zoned for visitor-serving uses (in some instances through the conversion of already existing lower cost accommodations), rather than pursuing construction, operation, and/or maintenance of new and existing lower cost accommodations, such as economy hotels. This trend has resulted in the loss of either potential or existing lower cost overnight accommodations in the coastal zone. Overall, the Commission's history of permitting overnight accommodations in the coastal zone confirms the need to safeguard against the loss or preclusion of lower cost overnight accommodations along the coast, as recognized both in the Coastal Act and the LCPs that implement it.

As additional higher cost hotels are developed, the remaining lower cost to moderate cost hotel accommodations in the coastal zone tend to be older structures that become less economically viable as time passes. Further, as more redevelopment occurs, the stock of lower cost overnight accommodations tends to be reduced, since it is more lucrative for developers to replace these structures with higher cost accommodations or, as in this case, to build a new high-end hotel on parcels that historically have not included visitor-serving accommodations. Commission staff prepared a study for a 2016 Commission workshop on lower cost accommodations, which reviewed statewide data about such lower cost units in the coastal zone since 1989. In its report to the Commission in 2016, staff found that out of six “cost” categories ranging from “economy” to “luxury,” a total of 24,720 economy rooms had been lost¹⁶ since the late 1980s, compared to a loss of a combined 11,247 rooms in the remaining five classes. In other words, economy rooms were lost at over twice the rate, over the same time period, of all other cost categories combined. Thus, all told, nearly 70% of all overnight rooms that were lost in the coastal zone between 1989 and 2016 were attributable to lost economy rooms, whereas less than 10% of the rooms lost have been in the upscale and luxury categories, and less than 0.2% have been lost in the luxury category. Such trends have made it much more difficult for those of more limited financial means to access the coast.

The reduction in lower and moderate cost overnight accommodations in the coastal zone is also a serious environmental justice issue. Section 30604(h) of the Coastal Act provides that when acting on a coastal development permit, the issuing agency “may consider environmental justice, or the equitable distribution of environmental benefits.” As defined in Section 30107.3(a) of the Coastal Act, “environmental justice” means “the fair treatment and meaningful involvement of people of all races, cultures, incomes and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies,” and, pursuant to Coastal Act Section 30013, the Commission and all public agencies are charged with advancing environmental justice principles when implementing the Coastal Act. Thus, environmental justice considerations are also relevant to the Commission’s review of new higher cost hotel proposals, like this one.

The Commission’s Environmental Justice Policy, adopted in March 2019, indicates that the Commission shall “strive for a no-net-loss of lower cost facilities in the coastal zone, while implementing a longer term strategy to increase the number and variety of new lower cost opportunities.”¹⁷ In California, equitable coastal access and recreation opportunities for all populations has not been realized to date due to historic and social factors, such as discriminatory land use and economic policies and practices, with greater barriers to access experienced by low-income communities, communities of

¹⁶ “Loss” includes: demolition of lower cost accommodations (without replacement), demolition of lower cost accommodations and replacement with high-cost, and simple conversion of lower cost accommodations to high-cost through simple site improvements (or sometimes, even by just charging a higher rate where market demand could support such higher rates).

¹⁷ See [California Coastal Commission Environmental Justice Policy](#), published by the Commission on March 8, 2019.

color, and underserved communities.¹⁸ Spatial analysis of 2010 Census data shows a majority of Californians (70.9%) live within 62 miles of the coast, but populations closest to the coast are disproportionately white, more affluent, and older than those who live farther inland.¹⁹

Given hotel developers predominantly pursue higher cost and luxury hotels, including in many cases where such higher cost offerings take the place of existing lower cost options along the coast, it is becoming increasingly important to focus on protecting and providing lower cost overnight accommodations in the coastal zone as required by the Coastal Act and LCPs. Absent an adequate number and type of lower cost lodging facilities, a large segment of the population will be effectively excluded from overnight stays at the coast. To this point, “financial reasons” was listed as the number one barrier to staying overnight at the coast, as identified by respondents to a State Coastal Conservancy-commissioned survey in 2017.²⁰ Accordingly, a lack of affordable overnight accommodations becomes a barrier to accessing the coast, a barrier that is more acute for people from inland communities and of lower income brackets. Therefore, the Commission and other permitting authorities must help reduce barriers and increase access to a segment of the population facing inequities when visiting the coast by protecting and providing lower cost lodging for the price sensitive visitor as is mandated by the Coastal Act. This in turn enhances access to our collective public coastal commons, helping to ensure true access for all.

While the Commission has taken various approaches to implement Coastal Act Section 30213 and corresponding LCP provisions, and absent a specific LCP definition or requirement, it has generally, and on a case by case basis, identified lower cost overnight accommodations as those with rates of 75% or less of the statewide average daily rate,²¹ high-cost accommodations as those with rates of 125% or greater than the statewide average daily rate, and moderate-cost as those with rates falling in between. Once such rates are identified, the Commission has typically required that lower cost accommodations, again on a case by case basis for Coastal Act consistency, be provided at an amount equal to 25% of the number of proposed high-cost accommodations.²² This can be in the form of providing on-site or off-site lower cost

¹⁸ See “[Free the Beach! Public Access, Equal Justice, and the California Coast](#)”, Robert Garcia & Erica Flores Baltodano, 2 Stanford Journal of Civil Rights and Civil Liberties. 143 (2005); [Report on Coastal Act Affordable Housing Policies and Implementation](#), published by the Commission on February 10, 2015; [Report on the Historical Roots of Housing Inequity and Impacts on Coastal Zone Demographic Patterns](#), published by the Commission on June 9, 2022.

¹⁹ See [Coastal Access Equity and the Implementation of the California Coastal Act](#), Reineman, et al., (2016) Stanford Environmental Law Review Journal, v. 36. Pages 96-98.

²⁰ See [Explore the Coast Overnight- An Assessment of Lower Cost Accommodations](#), published by the State Coastal Conservancy on January 8, 2019.

²¹ The statewide hotel average is determined by collecting statewide peak season (summer) average daily room rates for standard, double occupancy rooms. To ensure that the lower cost hotels and motels surveyed meet a minimally acceptable level of quality, including safety and cleanliness, this determination uses only AAA Auto Club-rated properties that are rated one- or two-diamond.

²² The genesis for the 25% goal is two-fold: 1) for consistency with the Commission’s affordable housing requirements when the Coastal Act provided the Commission the direct authority to require affordable

accommodations and/or an in-lieu fee commensurate with the cost of constructing such units elsewhere, where in some cases the Commission has considered some combination of these options.

In cases where applicants have proposed low- or moderate-cost rooms, the Commission has not required additional lower cost overnight accommodations but instead has ensured the project includes other forms of public access enhancements and amenities (e.g., bike rentals, public plazas, etc.) so as to ensure an array of such enhancements/amenities, including focusing on lower cost or free enhancements/amenities that would improve the experience of guests in the lower cost rooms. Again, by protecting and providing low- and moderate-cost lodging for the price-sensitive visitor, a broader segment of the population could have the opportunity to visit the coast.

Appeal Contentions

The appeals contend that the City-approved project raises a series of questions regarding consistency with the above-cited Coastal Act and LCP policies that require and protect lower cost visitor accommodations. Specifically, they contend that the approved project's combination of monetary contributions, public access improvements, and other on-site components do not fulfill the lower cost visitor accommodation requirements of the Coastal Act and LCP. The appeals further contend that the project lacks any on-site lower cost accommodations and assert that the project's in-lieu fee methodologies appear to significantly underestimate the amount of required in-lieu fees. In short, the appeals contend that the City's CDP approval does not adequately provide for lower cost accommodations. See **Exhibit 5** for the full appeal documents.

Analysis

The first step in this analysis is to identify the minimum number of required lower cost overnight accommodation units to comply with Coastal Act and LCP requirements. Such analysis requires an evaluation of the type of units proposed, and whether they are low, moderate, or high cost. As noted above, the Commission in past actions has required 25% of the number of rooms to be lower cost. In this case, the Applicant's lower cost analysis (prepared in 2024) identifies a per night price for all 232 hotel units of about \$330,²³ which would make them all qualify as higher cost. This is because, using the Commission's typical methodology to define cost thresholds above, the statewide average daily rate (ADR) for standard, double occupancy rooms during the peak-season (July/August 2023 is the most recent datapoint) was about \$200. 75% of this amount (i.e., the lower cost threshold) would be approximately \$150, and 125% of this amount (i.e., the higher cost threshold) would be approximately \$250. Thus, the proposed rooms exceed \$250 and would be considered high-cost, and the Coastal Act

housing units (i.e., the Commission typically required 25% of proposed units to be affordable, until the Coastal Act was amended to remove this affordable housing requirement); and 2) since roughly 25% of the total hotel mix across the state is comprised of lower cost economy hotels, the idea is to have that same mix be present in the coastal zone.

²³ See "Feasibility Addendum, Low-Cost Accommodations Analysis, Proposed Hotel Downtown Santa Cruz, 302-328 Front Street, Santa Cruz, California." Prepared by HVS Consulting & Valuation, June 5, 2024.

and LCP at a minimum would typically require the Applicant to provide at least 58 lower cost units if feasible.²⁴

The City's approval did not require, nor did the Applicant propose, any on-site lower cost rooms at or below the lower cost ADR identified above, and instead, included a lower cost package of various on- and off-site components. The package included an in-lieu fee of some \$5 million to be held by the City, with the intent of such funds to go to a long-envisioned project at Greyhound Rock County Park, which is a blufftop/oceanfront Santa Cruz County-owned park on the County's North Coast.²⁵ Other package components include offering six on-site suites with built-in kitchenettes that are designed to accommodate families with children including with built-in bunk beds; a \$50,000 contribution to the Santa Cruz Hostel Society for needed repairs/deferred maintenance needs for its Carmelita Cottages hostel facility near the Santa Cruz Beach Boardwalk;²⁶ a similar \$50,000 contribution to the Boys and Girls Club of Santa Cruz County; a \$100,000 contribution (made up of \$10,000 contributions to the City each year for ten years) to help fund the City's Santa Cruz beach and downtown shuttle operation, which provides rides (at \$1 per ride) from downtown to the beach; affordable housing contributions, including two fees/contributions totaling \$727,500 to the City's affordable housing trust fund as well as providing four affordable housing units for hotel workers; and other site improvements including a 50-foot wide public paseo leading from Front Street to the Riverwalk, Riverwalk levee improvements, an outdoor extension area (complete with benches, tables, and free Wi-Fi), tower viewers to view the river, free 90-minute bike rentals, and a public restroom. The City and Applicant believed this collective package would meet the goals and intent of the Coastal Act and LCP's lower cost accommodations requirements, and found it infeasible to provide for any additional amenities, including any on-site lower cost units.²⁷

A few things should be noted about the City's approval. First, although the approved project includes a host of meaningful and beneficial elements, it is not equivalent to providing 58 lower cost rooms. Because the hotel would be rather large with 232 rooms and in a prime downtown Santa Cruz location walkable to the beach, its lack of any on-site lower cost units raises significant Coastal Act and LCP conformance issues

²⁴ 232 high-cost rooms x 0.25 = 58 rooms that must be provided at lower cost.

²⁵ The Greyhound Rock project, which has not yet been approved by the County, is conceptually to provide for between 12-16 lower cost cabins and other public access amenities.

²⁶ The Carmelita Cottages date back to the 1800's and provide lower cost accommodations for up to 48 travelers to stay in dorm rooms, private rooms, or private cottages.

²⁷ The Applicant further substantiated this claim after the City Council's approval by providing Commission staff with a market feasibility/financial report. Among other things, the report determined that providing units at the lower cost rate of \$150 per night range would make the project financially infeasible. However, there are many questions regarding the assumptions in this conclusion. For example, the report assumed the proposed \$330 per night rates would not change, and thus did not account for various other ways to finance lower cost rooms, including perhaps raising the rates of a handful of other high-cost rooms to essentially subsidize the lower cost ones. It also assumed some somewhat questionable requirements, including maintaining a positive cash-flow even during construction. In the Commission's experience, applicants typically are assuming that the hotel project will be somewhat cash-negative until the hotel is operational, at which time the net operating income (NOI) begins offsetting those initial losses. In other words, the report assumed an aggressive financial goal.

warranting the Commission to review the project more closely. The Commission has been steadily trending towards preferring on-site lower cost units as a key part of any proposed lower cost package, including recently in nearby Pacific Grove.²⁸ And for large hotel projects like this one where there is a certain economy of scale and flexibility to provide for some level of on-site lower cost units, it is becoming more of an expectation to do so. Secondly, the City attributed certain public access related elements to the lower cost accommodation obligation. While the public access improvements such as the Riverwalk extension and paseo improvements represent rather significant public access contributions and benefits that address broader public coastal access obligations (under Coastal Act Section 30210 and analogous LCP policies), they are fundamentally different than lower cost overnight accommodations requirements (under Coastal Act Section 30213 and corresponding LCP policies). And while some of the workforce/affordable housing contributions for hotel workers help foster the visitor-serving economy and thus may be able to be understood in an accommodations context (more on this issue subsequently in the de novo review findings), some of others components the City attributed to address the lower cost overnight accommodation obligation do not have an accommodations nexus (e.g., Boys and Girls Club contributions).

Thus, the primary lower cost accommodations component is the \$5 million in-lieu fee. The Applicant indicates the fee was predicated on both the estimated cost of the proposed Greyhound Rock project (again, to provide for between 12-16 cabins), as well as the Commission's past use of roughly \$145,000 as a per unit in-lieu fee.^{29,30} On this point, the Commission has used various metrics over the years for this calculation. It is true that in recent years it has used \$100,000 (in 2015 dollars) as a base construction cost estimate³¹ for an off-site lower cost unit, and has updated that number yearly using the Turner Building Cost Index (TBCI) (in 2024, this amount is about \$150,000).³² Using this \$150,000 metric would result in a total in-lieu fee of \$8.7 million,³³ which is above

²⁸ As part of the Commission's April 2024 approval of the American Tin Cannery hotel resort, where 18 such lower cost units and a 16-unit/64-bed hostel facility were proposed within the 206 high-cost unit hotel. The Commission also discussed this preference in the July 2024 Informational Briefing on Lower Cost Overnight Accommodations: <https://documents.coastal.ca.gov/reports/2024/7/Th7/Th7-7-2024-exhibits.pdf>.

²⁹ The City also credited the six-family suites towards the projects' overall lower cost accommodations in-lieu fee at a rate of 50% credit, as the family rooms were only proposed to be rented at the standard rate during 50% of the year. Thus, the City reduced the total number of high-cost rooms on-site from 232 to 229 (232-3). Applying the above-described 25% rule, the City determined that the project was required to accommodate 57.25 lower cost rooms or pay an equivalent in-lieu fee.

³⁰ Using the approximate \$145,000 per room fee, the City calculated an in-lieu fee of approximately \$8.3 million. However, the City credited (1) the affordable housing fee contribution; (2) the four workforce housing units; and (3) the contributions to the Boys and Girls Club and the Santa Cruz Hostel Society, which reduced the in-lieu fee to approximately \$5 million.

³¹ Based on a 2014 construction cost estimate provided by Hostelling International for the Shore Hotel Project, CDP No. 5-18-0872.

³² The Turner Building Cost Estimate is an industry standard that is used widely by federal and state governments to measure costs in the nonresidential building construction market in the United States: <https://www.turnerconstruction.com/cost-index>.

³³ 58 lower cost units times a \$150,000 construction cost-per-unit equals \$8,700,000.00.

the Applicant's \$5 million. Thus, using this metric, the proposed in-lieu fee appears to significantly under-provide lower cost overnight accommodations necessary for Coastal Act and LCP consistency.

However, the Commission has made clear that even this metric isn't a perfect proxy, including because it can significantly undercount the amount of money it takes to construct an actual lower cost unit.³⁴ Most recently, the Commission has found that current-day construction costs of a lower cost hotel unit (i.e., standard double-occupancy room) are much higher, even double, than the previously-used construction cost estimate even when adjusted using a building cost index.³⁵ Assuming that means about \$300,000 for a lower cost hotel unit, with an additional 30% increase to serve as a proxy for land costs,³⁶ plus another 10% on top to address various other assumptions (e.g., administrative fees to hold the money in an account, project administration and management, permitting fees, etc.), this comes out to about \$429,000 per unit at present.³⁷ This number generally aligns with the empirical per-unit assumptions and estimates used for recent projects, including for the American Tin Cannery project, which estimated the cost to build a lower cost unit in Pacific Grove at about \$465,000.³⁸

³⁴ See Commission findings on this topic for the Ocean Avenue Hotel (CDP 5-22-0799), the Dana Point Harbor Hotels (LCP Amendment LCP-5-DPT-21-0079-2), and the American Tin Cannery Hotel Resort (CDP A-3-PGR-22-0004).

³⁵ Including as identified in the Commission's July 2024 Informational Briefing on Lower Cost Overnight Accommodations: <https://documents.coastal.ca.gov/reports/2024/7/Th7/Th7-7-2024-exhibits.pdf>.

³⁶ Land acquisition costs can be an important element in assessing adequate in-lieu fees. Hostelling International provided a sample estimate for what it might cost to construct a new 100-bed hostel in Southern California in 2014. The report evaluated land purchased at approximately \$100/square foot, which represented approximately 30% of the construction cost estimate. Subsequently in 2015, the Commission's consultant at the time (Maurice Robinson) confirmed this estimate but stated that land acquisition costs are tremendously variable throughout the State, and even within specific regions (e.g., coastal zone vs. inland). For instance, Robinson asserted that the range in land costs could have been as great as from \$100/sf to \$600/sf in Los Angeles County's coastal zone at the time. As such, he suggested that for each application where land acquisition costs are contemplated, is it important to derive a current estimate of the cost for an appropriate-sized local parcel of land to support replacement lodging units. In this case, the Applicant is not able to provide a land acquisition cost estimate. In other recent Commission actions, such as the Ocean Avenue Hotel in Santa Monica, the applicants' consultant estimated that land acquisition costs in the area are approximately \$200,000 to \$300,000 per room, representing approximately 30%-40% of construction costs, and in the case of the American Tin Cannery Hotel Resort in Pacific Grove, the applicants' consultant's evaluation was that land acquisition costs would be approximately \$6 million per acre in the general vicinity, equivalent to \$137/square foot, or approximately 30% of the construction costs; both of these cases show consistency with the order of magnitude found in Hostelling International's 2014 estimates. As such, in the absence of a site-specific estimate, the Commission approximates 30% of the construction costs as land acquisition costs.

³⁷ This estimate would need to be adjusted to account for inflation until time of the fee payment. At the Commission's [July 2024 Informational Briefing on Lower Cost Overnight Accommodations](#), the Commission indicated a preference to use the California Construction Cost Index (CCCI) to make adjustments moving forward, since it is a more precise calculation for the unique aspects of California's hotel construction industry, as compared to the nationwide Turner Building Cost Index.

³⁸ Based on assumptions made in that project, including the size of a typical lower cost unit (423 square feet, inclusive of needed common spaces such as a lobby and hallways), 1 parking space per unit (at \$33,095 per space in a structured lot, or taking up about 325 square feet of per space at \$335/square

When applying these data points and assumptions, the in-lieu fee would be roughly \$25 million (58 units times \$429,000 per unit). Since this in-lieu fee amount is based on the Commission's refined understandings of on-the-ground conditions and industry assumptions, including in terms of including land costs and related measures necessary for an actual project to be realized, it represents a more accurate manner in which to assess an off-site in-lieu fee. And the fee ultimately proposed by the Applicant and applied by the City, \$5 million, is significantly shy of the estimated cost of providing 58 lower cost units.

In short, the City's approval raises fundamental questions as to whether it sufficiently meets the Coastal Act and LCP's lower cost overnight accommodations requirements. And for a project of this scope and magnitude in an area that lacks quality lower cost accommodations, it is even more important to ensure consistency to provide on-the-ground lower cost units to serve the visiting public. For all of the above reasons, the City's approval raises a substantial LCP and Coastal Act conformance issue with respect to lower cost overnight accommodations.

2. Downtown Plan

The City of Santa Cruz's LCP includes various geographical area plans with unique/individualized standards and requirements for each plan. The City-approved project falls within the Downtown Plan (Plan), and thus the project must meet the standards set forth within the Plan, including related to site development standards such as maximum allowed height, minimum required setbacks, required articulation, etc. The Plan also includes allowances for increased height when certain parameters are met. More specifically, the Plan acknowledges that deviations from the base standards are appropriate if the project helps satisfy other Plan objectives/community benefits. For example, increased height may be permitted if the following requirements are met:

IP Section 24.10.2301: Chapter 4, Additional Height Zones, Additional Height Zone B

b. Additional Height Criteria for Project Approval. *The development project shall be found consistent with the following overarching City objectives:*

- i. The additional height will help to achieve the First Principles of the Downtown Plan (e.g., form, scale, housing, accessibility, and open space);*
- ii. The additional height will contribute to an improved social and economic environment;*
- iii. The form of the development promotes the appearance of a grouping of buildings rather than large, monolithic building masses;*
- iv. The development receiving additional height will physically and/or financially contribute its fair share (through an Improvement District, Development Agreement or similar mechanisms) to the implementation of internal pedestrian connections between Front Street and the Riverwalk;*

foot), land costs of \$6 million per acre (where an estimated 0.72 acres would be needed for a 47-unit lower cost hotel), plus a 10% administration fee.

- v. *The additional height will help to meaningfully achieve one or more of the following key community objectives, including but not limited to: Economic Development Contributions to the Downtown, Affordable Housing, Day Care Center, exceed Green Building minimums, Incubator Space for Small Business, Public Access Easements, Public Right-of-way Improvements, Publicly Accessible Open Space, Structured or Shared Parking, and Transportation Demand Management concepts;*
- vi. *Clear demonstration of the public benefit relating to two principal objectives: high quality public access between Front Street and the river, and the appropriate treatment of the riverfront edge along the Riverwalk;*
- vii. *Affordable Housing Public Benefit Fee for Non-Residential Projects. An application for additional height is voluntary. Because an applicant requesting additional height is receiving a benefit in the form of increased height and intensity, and to ensure that non-residential projects which are granted additional height reasonably contribute to the City's need for affordable housing, non-residential projects that are granted additional height shall be required to pay an in-lieu public benefit fee. The in-lieu public benefit fee shall be a minimum of \$5.00 per square foot of gross floor area occurring above the 50-foot Base Height limit (i.e., the additional gross floor area occurring within the project on levels that exceed the 55-foot Base Height limit). The fee shall be paid prior to occupancy of the project. All fees provided collected under this section shall be deposited in the City of Santa Cruz's affordable housing trust fund.*

Thus, the LCP allows for projects to request additional height if they meet key LCP objectives and parameters (e.g., reducing massing of buildings, improving pedestrian connections, and funding affordable housing). In addition, for non-residential projects specifically, the LCP requires projects requesting additional height to contribute to the City's Affordable Housing Trust Fund in an amount of at least \$5.00 per square foot of gross floor area above the base height limit.³⁹

Appeal Contentions

Two appellants contend that the City-approved project raises a series of questions regarding consistency with the LCP's Downtown Plan and the affordable housing fee requirements for non-residential projects seeking additional height. Specifically, they contend that the approved project does not meet the requirements to qualify for additional height because the affordable housing fee is the minimum required by the Plan; and that residential development would be more appropriate for this site, including to match the surrounding environment and meet the City's Regional Housing Needs Allocation (RHNA) targets. See **Exhibit 5** for the full appeal documents.

Analysis

The approved project is located in "Additional Height Zone B" of the City's Downtown Plan, which allows for an increase in the maximum allowed height from 50 to 70 feet (with an additional 15 feet allowed for activated rooftops and rooftop appurtenances, as discussed more below, for a total of 85 feet) and an increase in the maximum allowed

³⁹ See footnote 8 for details on the City's AHTF purpose, use, etc.

number of stories from 5 to 6 if certain conditions are met under a two-part test. First, additional height and an additional story is allowable if any one of the following conditions are met:

- The aggregate parcel size is greater than 15,000 square feet.
- The frontage along Front Street is greater than 100 feet.
- The parcel is located between adjacent structures of three or more floors in height.
- The project qualifies for a density bonus as allowed under either state law or a City-adopted density bonus ordinance.

In this case, the City found that two of the four criteria rendered the project eligible for additional height and an additional story (i.e., the aggregate parcel size is over 36,000, over the 15,000 square foot threshold, and the street frontage along Front Street is 370 feet, again over the 100-foot threshold). Accordingly, part one of the two-part test is satisfied.

The second part of the test requires the City to determine that the project is consistent with each of the seven objectives described above in Section 24.10.2301, including that the project includes exemplary design and that, for non-residential projects, it pays the correct fee into the City's AHTF.

The City determined the project to be consistent with each of the above objectives by finding that: 1) the additional height allows for architectural variation and provides publicly accessible open space by virtue of the building setbacks and the provision of the public paseo and public space between the building and the Riverwalk; 2) the project will provide much needed hotel rooms in the downtown area as there are presently no hotels in the Downtown area, and will help stimulate the lower downtown area and generate significant economic revenue including the land sale and transient occupancy taxes, the former of which will be directed to the City's AHTF; 3) the project will provide high-quality access between the downtown commercial core and Front Street to the Riverwalk via the Maple Alley public paseo; 4) the project will help achieve key community objectives, including the addition of publicly-accessible open space adjacent to the Riverwalk, hotel rooms and conference spaces, and a variety of different-sized commercial spaces that can provide incubator space for small businesses; and 5) the project will provide an in-lieu fee of \$227,500 to the AHTF.⁴⁰

On this latter point, the LCP requires a *minimum* of \$5.00 per square foot be directed to the City's AHTF, which, in this case, would be \$227,500 for the roughly 45,500 square feet of extra space above the base 50-foot height limit. The City's required \$227,500 fee plus the additional \$500,000 contribution is triple that minimum, and the City also required the over \$2 million land sale of its current parking lot to also go into the AHTF.

⁴⁰ See page 86 of **Exhibit 3**.

In short, it does not appear that the project raises any substantial LCP conformance problems with respect to affordable housing.⁴¹

Finally, the Downtown Plan further allows for an additional 15 feet of height for appurtenant rooftop structures/amenities (e.g., rooftop bars, pools, shade structures, etc.) for a total height allowance of 85 feet:

Activated Roof Top Amenities. Because the Plan contemplates that rooftops provide opportunities for usable residential or commercial spaces, community gardens, other common or community amenities including rooftop bars and pools, shade structures, and associated access facilities, rooftop improvements will be permitted to:

- *Extend no more than 15 feet above the otherwise maximum allowable height limit;*
- *Shall be setback at least 15 feet from the edge of the roof, provided that they are found to better achieve stated Plan and community objectives;*
- *Are architecturally integrated into the building design; and*
- *Structures above the height limit are limited to not more than 50% of the gross rooftop area.*

Such variations shall be minor in nature and must receive a recommendation from the Planning Commission, with final approval by the City Council. These exceptions are in addition to additional height allowances found in Section 24.12.150 of the Zoning Ordinance.

In this case, the rooftop space will extend 10 additional feet above the base height of 65 feet, and will be activated with a rooftop pool, lounge, bar, food prep kitchen, and bathrooms (in total occupying approximately 2,500 square feet or 11% of the rooftop area), in addition to enclosed mechanical equipment, elevators and stairs, and solar panels. Accordingly, the City appropriately authorized the additional 10 feet of height to accommodate the rooftop appurtenances.

In summary, the 6-story City-approved project, which stands at 75 feet tall (65 feet of base height plus the 10 feet for rooftop amenities) is below the maximum allowed 85 feet and adequately satisfies the various tests to allow for the additional height. While issues of design and character can be somewhat subjective, and reasonable people can and do disagree on whether a proposed project adequately ‘fits in’ with its neighborhood aesthetic, in this case, the project is located in downtown Santa Cruz and not a rural or undeveloped area. In fact, the City has taken a rather robust charge to redevelop its downtown from one and two-story structures into multi-level buildings so as to meet the City’s housing, particularly affordable housing, needs. Numerous structures of similar height and design are either already built, approved, or under construction, including an 85-foot-tall residential structure directly across the street from the proposed project, as well as several residential projects of similar size next door.

⁴¹ The project is also providing four housing units to be offered to hotel workers at no more than 30% of their monthly salary, thus allowing for additional contributions to affordable housing in the community in excess of the contribution to the AHTF.

Thus, the additional height in this case appears appropriate, and helps bring in a much-needed hotel into the downtown land use mix. The project also includes extensive public access amenities and affordable housing contributions that serve as the LCP-required public benefits needed in exchange for such additional height. The City's approval does not appear to raise any significant conformance issue with the Downtown Plan's height, access, and affordable housing requirements.

Finally, it should be noted that the Appellants' contention that residential development would be a more appropriate use for this site, including to match the surrounding environment and meet the City's Regional Housing Needs Allocation (RHNA) targets, hotels/motels are principally permitted uses at this site, and the City has devoted significant resources to ensure that the majority of redevelopment downtown is residential development. On this point, much of the redevelopment in the vicinity is new housing including a 205-unit development across the street from the project site on Front Street; Pacific Station South, a 100% affordable, 70-unit development and Pacific Station North, a 100% affordable, 94-unit project, both located on Front Street; and a 175-unit development just north of the project site on Front Street. Moreover, the City of Santa Cruz is among only 8% of municipalities statewide that has met its RHNA requirements for the 5th (2015-2023) cycle at every income level. The Downtown Plan envisions both housing and non-residential uses, and the project's affordable housing contributions appropriately follow the prescriptions for non-residential projects to help fund needed affordable housing. Thus, the project is an allowed use and doesn't raise any LCP conformance issues in this regard.

In short, the City's approval appears consistent with the LCP's Downtown Plan requirements, including with respect to meeting the requirements for increased height by requiring good urban design, extensive public access amenities and infrastructure, and meaningful affordable housing contributions. For these reasons, this component of the City's approval does not raise a substantial issue of LCP conformance with respect to the Downtown Plan's requirements.

3. Public Access and Recreation

Applicable Coastal Act and LCP Policies

In addition to Coastal Act access provisions in Sections 30210-30214, which are applicable standards of review in appeal actions, the LCP's public access policies protect, maintain, and improve public access and recreational opportunities throughout the City of Santa Cruz's coastal zone. The LUP seeks to improve bike/pedestrian connectivity between the Downtown and the San Lorenzo River, and ensure that development is integrated with the river and levee paths with design elements that activate the space between development and the Riverwalk including both passive and active recreation uses (e.g., seating, nature viewing elements, etc.). Specifically, the LCP states:

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

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

LUP Land Use Element Policy 5.6.2: *Provide public access from and through new development to adjacent or nearby schools, parks, natural areas, and coastal recreation areas.*

LUP Parks and Recreation Element 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 principles, safety, and rights of private property owners.*

LUP San Lorenzo Urban River Plan – Goal 3: *Improve the scenic and recreational value of the riverfront.*

LUP San Lorenzo Urban River Plan – Goal 4: *Improve public access and pedestrian/bicycle movement to and along the river.*

LUP San Lorenzo Urban River Plan – Goal 5: *Improve the urban and neighborhood interface with the San Lorenzo River, Branciforte Creek, and Jessie Street Marsh.*

LUP San Lorenzo Urban River Plan – Goal 6: *Incorporate the San Lorenzo River, Branciforte Creek, and Jessie Street Marsh into the surrounding urban fabric of downtown and neighborhoods.*

LUP San Lorenzo Urban River Plan – SRFA 1: *Require new development projects to incorporate design features that encourage active engagement with the Riverwalk such as: filling adjacent to the Riverwalk and landscaping, providing direct physical access to the Riverwalk, including appropriate active commercial and/or residential uses adjacent to the Riverwalk or providing a combination of these and/or other design features that support the resource enhancement and river engagement policies of the San Lorenzo River Plan.*

LUP San Lorenzo Urban River Plan – SRFA 2: *Require new development projects to incorporate pedestrian and/or bicycle connections between Front Street and the Riverwalk at appropriate locations such as the extensions from Maple Street near Elm Street.*

LUP San Lorenzo Urban River Plan – SRFA 3: *Maintain the ten-foot setback area between residential and commercial uses adjacent to the levee trail from the western edge of the trail. The area between the property line and the Riverwalk shall be filled to raise the adjacent ground-level use to a similar or higher elevation as the Riverwalk. The public lands between the Riverwalk and the private property may incorporate publicly accessible commercial or residential amenities, such as outdoor public seating...*

Further, the LCP's Downtown Plan provides specific development guidelines for projects located adjacent to the Riverwalk. These policies describe key performance

criteria in order to better integrate private development with public recreation spaces. Specifically, the IP states:

IP Section 24.10.2301: Chapter 4, Front Street/Riverfront Corridor Development Standards and Design Guidelines

5. Access to the Riverwalk. Between Soquel Avenue and Laurel Streets along Front Street, new development shall provide east-west public access between the Riverwalk and the Front Street sidewalk at or near the extension of Cathcart Street, Elm Street and Maple Street. Developers of riverfront properties shall be required to physically and/or financially contribute their fair share through conditions of approval, an Improvement District, Development Agreement, or similar mechanisms to the improvement of these publicly accessible connections. Development shall be consistent with the following performance standards:

- a. Publicly Open Passageways. Such access shall be open to the public during daylight hours.*
- b. Pedestrian Focus. Such publicly accessible connections shall be predominantly pedestrian in nature and located within 50 feet of the Front Street intersections at the terminus of Cathcart Street and the extensions of Maple and Elm Streets. In addition to the pedestrian access, bicycle access shall be provided at the extension of Elm Street, which will serve as the primary bicycle access to the Riverwalk between Soquel Avenue and Laurel Street.*
- c. Passageways Widths. The width of these publicly accessible pedestrian connections shall be no less than the following: 60 feet at or near the terminus of Cathcart Street; 50 feet at or near the terminus of Maple Street; and 30 feet at or near the extension of Elm Street.*
- d. Vertically Open Passageways. These passageways shall be open to the sky, provide high quality accessible path of travel between the Front Street sidewalk and the Riverwalk, and provide clear building breaks that avoid the walling off of the river from downtown.*
- e. Pedestrian Oriented Uses. The pedestrian passageways shall be lined with active pedestrian-oriented uses that create a safe and interesting environment, including commercial uses, outdoor cafes, resident-serving amenities, building entries and/or lobbies. Such uses, particularly restaurants and outdoor cafes, are strongly encouraged to provide direct frontage and active outdoor areas along both the pedestrian passageway and the Riverwalk.*

The LCP thus includes both broad provisions related to maximizing public access, recreation, and enjoyment, as well as very specific ones regarding this site and how development must provide certain new connections from Front Street to the River, new levee/riverwalk extensions fronting the River, and overall include extensive improvements to the public sphere at this prime downtown site.

Appeal Contentions

One Appellant contends that the approved project does not maximize public access opportunities. Specifically, the appeal contends that the project fails to provide “meaningful public access” as part of the conditions of approval for the project. See **Exhibit 5** for the full appeal documents.

Analysis

As noted, the LCP includes a set of goals, objectives, policies, and implementing standards designed to protect, maintain, and improve public access and recreational opportunities along the San Lorenzo River and the Riverwalk. For example, the LUP requires new development projects to be designed to “encourage active engagement with the Riverwalk” by incorporating ground floor commercial space, publicly accessible outdoor areas, and improving the scenic and visual qualities of areas located adjacent to the Riverwalk. The LUP also requires enhancing pedestrian and bicycle movement by improving connections to and along the river and by filling in the space between the levee and new development to expand the Riverwalk area and better integrate the downtown with the Riverwalk. The IP requires new development to incorporate east-west pedestrian and bicycle linkages between downtown and the Riverwalk and to design such projects with pedestrian-oriented uses in mind. In other words, the LCP recognizes the particular importance for public access purposes at sites located adjacent to the San Lorenzo River and seeks to ensure that any project there makes public access amenities, needs, and spaces an integral part.

The City-approved project includes several elements to improve bicycle and pedestrian connectivity between the downtown and the riverwalk. Notably, the project includes significant public access amenities and improvements including a new 50-foot wide public paseo named “Maple Alley”, which serves as the LCP-envisioned east-west connection point between Front Street and the Riverwalk; a new Riverwalk extension area between the levee and the new hotel (of some 10,000 square feet of new public space by filling in the area between the hotel and the levee as envisioned by the LCP) including publicly accessible seating and gathering areas between the Riverwalk and the hotel building; rooftop bar access for the general public and guests alike; tower viewers for the public to view the river and surrounding area from an elevated vantage point; free 90-minute bike rentals for the general public; free Wi-Fi in the publicly accessible outdoor areas; and a ground floor public restroom, all of which can be utilized by both hotel guests and the general public. The project also includes improvements along Front and Laurel streets, including widened sidewalks, decorative lighting, and landscaping.

Importantly, the 4-plus mile San Lorenzo Riverwalk generally lacks gathering and seating areas, and so the project’s Riverwalk expansion and the Maple Alley paseo would fill this much needed void in addition to integrating the Riverwalk with the City’s downtown. Moreover, the paseo specifically is intended to provide space for free organized events (i.e., with moveable stadium seats). Further, both the outdoor space and public bathroom can be accessed from the Riverwalk/nearby streets, meaning that the public need not traverse private space to utilize such amenities, thereby reducing psychological barriers to general public access and relieving perceived pressure to

purchase goods, or to only use such facilities with a purchase, which would have limited their public access utility.

In short, the project includes rather significant commitments to improving the adjacent Riverwalk areas and provides additional publicly accessible spaces. These components will undoubtedly enhance the relationship between downtown and the river and will create low-barrier public access amenities at no cost to the public. Put another way, the LCP demands much in terms of public access improvements for new development in this area, and the City-approved project appears to meet these requirements. For these reasons, the City's approval of a CDP for the proposed project does not raise a substantial issue of LCP conformance with respect to public access.

4. Public Views/Neighborhood Compatibility

Applicable LCP Provisions

In addition to the previously described site planning standards specified in the Downtown Plan, the LCP includes viewshed/neighborhood compatibility requirements that speak to prioritizing infill development within existing neighborhoods and commercial districts, maximizing land intensity or density in areas with adequate services that are unconstrained by hazards such as the urban downtown, and protecting public views:

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

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

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

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

Appeal Contentions

One appeal contends that the height, mass, and scale of the project is not compatible with the surrounding built environment and would have adverse impacts on public views. Specifically, the appeal contends that the project will reduce public views of the Santa Cruz Mountains. See **Exhibit 5** for the full appeal contentions.

Analysis

The LCP includes policies and standards designed to concentrate new development within urbanized areas to maximize land intensity and density and reduce impacts to public views. Within the downtown area, the LCP establishes height limits (in this case,

allowing for a maximum of 85 feet on the project site) and design standards (e.g., articulation, setbacks, etc.) to reduce the appearance of massing. In other words, the LCP generally directs growth to its urban core, which is generally not so constrained by hazards and sensitive coastal resources including coastal views, while nevertheless ensuring the protection of coastal resources.

Here, the City-approved project meets the LCP's quantitative standards regarding height, setbacks, story stepbacks, and other site planning provisions. As described previously, the City made all the requisite findings to provide for the increase in building height from the base height limit of 50 feet to the approved 75 feet, including through required access amenities and affordable housing payments. The design of the project is also in line with the existing scale and character of the downtown area, including in terms of its articulation, materials, setbacks, scale, massing, and form. Notably, the project includes 10-foot stepbacks for floors above 50 feet in height (which would include the top two floors of the building) and 15-foot stepbacks for rooftop elements, both of which are in conformance with LCP requirements. In addition, the project would include ample landscaping and the installation of street trees along Front Street to reduce the amount of hardscape included as a part of the project and generally soften its physical appearance from public viewing points. As depicted in the approved project plans (see pages 34-37 of **Exhibit 4**), the development would be comparable to, or shorter than the nearby residential projects, including the Riverfront/Front Street residential project located to the north along the San Lorenzo River. While the Appellant alleges that the project would impact views of the Santa Cruz Mountains, arguably such views are not readily available in the area already and in fact the project would allow for the public to have increased access to such views via the publicly accessible rooftop space, public paseo, and Riverwalk extension. While the project is unarguably a material change to the status quo, and as such may impact certain existing mountain views from particular vantage points, the site is also in downtown where such higher intensity development is both envisioned, encouraged, and actively under construction. Again, and as noted before, issues of aesthetics and character can be subjective, and reasonable people can disagree regarding how well a project fits in with its surroundings. Given the downtown context, the view impacts in this case do not appear to rise to any significant level and can actually be understood to provide for more public space. In any event, such contentions do not raise any LCP conformance problems of note.

For these reasons, the approved project does not raise a substantial issue regarding public views and neighborhood compatibility.

5. Flooding/Geologic Hazards

Applicable LCP Provisions

The LCP requires careful evaluation and site design for new development projects located in areas subject to coastal hazards and flooding. Specifically, the LCP states:

LUP Safety Element Policy 1.2.1: Require engineering geology reports when, in the opinion of the Planning Director, excavation and grading have the potential to create unstable soil conditions.

LUP Safety Element Policy 2.1: *Require site specific geologic investigations by qualified professionals for residential development of four+ units, and commercial, industrial, public and semi-public development in known potential liquefaction and other seismic hazard area and require developments to incorporate the mitigations recommended by the investigations. In known liquefaction and other seismic areas in the Coastal Zone, a site specific geologic investigation shall be prepared for all new habitable structures notwithstanding the number of units prior to project approval.*

LUP Safety Element Policy 2.7: *Foundations for buildings developed alongside the San Lorenzo River should be set back from the levee to reduce the risk of damage as a result of lateral spreading.*

The LCP IP further requires site-specific investigations for developments with the potential to be affected by seismic hazards and/or which are located in low-lying flood-hazard areas, except for areas protected by the San Lorenzo River levee system:

IP Section 24.14.070: Seismic Hazards.

1. *Applicability. This section shall apply to project sites within areas identified as having potential for liquefaction as designated in the Safety Element of the General Plan (Map S-6).*
2. *Requirements. A site-specific investigation prepared by a qualified professional shall be conducted for... new commercial, industrial, public, and quasi-public structures proposed for construction in areas defined in subsection (1) herein. This investigation shall assess the degree of potential for liquefaction and/or seismic disturbance and shall suggest mitigation measures.*

In addition, in the Coastal Zone seismic hazard areas a site-specific investigation shall be prepared for all habitable structures.

3. *Action. When reviewing projects located in designated liquefaction areas, the zoning administrator or board shall find that appropriate mitigation measures from the required site investigation report have been incorporated into the design of the project. Further, if the zoning administrator or board finds that the proposed mitigation measures, including engineering techniques, cannot reduce identified hazards to acceptable risk levels, then the location of the proposed project shall be modified and/or the project disapproved.*

IP Section 24.14.500: Standards for A-99 Flood Zone Area (in part). *The A-99 flood hazard area has been designated by a Federal Emergency Management Agency Letter Map Revision dated June 26, 2002. These areas have received additional flood protection due to the construction of the new San Lorenzo River levee improvements by the U.S. Army Corps of Engineers. No base flood elevation has been designated for the A-99 flood hazard area. Standards for construction in the A-99 flood hazard area are set forth in this section:*

1. *Standards for Construction.*

- a. *The floodplain management requirements of Sections 24.14.460 subsections (1) – (3) and 24.14.470 do not apply to the A-99 flood hazard area.*
- b. *All neighboring communities shall be notified of any alteration in the carrying capacity or other watercourse alteration which could impact their community.*

Appeal Contentions

One appellant contends that the project would exacerbate flooding to adjacent low-lying residential neighborhoods and does not sufficiently mitigate potential earthquake/soil liquefaction threats. See **Exhibit 5** for the full appeal contentions.

Analysis

With respect to flooding, the site is within the Federal Emergency Management Agency (FEMA) Flood Zone A99 where potential flood impacts are low due to the protection afforded by the San Lorenzo River levee, a federal flood control system composed of an earthen levee that parallels both sides of the river. More specifically, the San Lorenzo River levee improvements constructed by the U.S. Army Corps of Engineers have reduced the flood risk to the project site to a 1% annual chance of occurrence. Because of the site's A99 designation, and under the guidelines of the LCP, new development within the A99 area is not required to meet the LCP's typical floodplain management requirements established in Part 4 of IP Chapter 24.14, again because there is only a 1% chance of annual flooding. Additionally, the City has undertaken a number of projects to increase flow capacity and further minimize flood threat adjacent to the levee in the last twenty-five years in the San Lorenzo River, including increasing the height of the levee system and widening a number of bridges over the river.

That said, and while the project may be exempt from some of the LCP's more specific flooding review requirements, it is still subject to its broader provisions to minimize flood risk and generally ensure new development is sited, designed, and engineered in such a manner as to address such potential risks. This is particularly important given its close proximity to groundwater. As such, the City and Applicant performed extensive tests to understand and address such risks. Regarding groundwater and drainage, field borings showed groundwater present between 5 to 7 feet below grade, and other past testing in the area showed that groundwater typically fluctuates from 7 to 11 feet below grade.⁴² The project will excavate down to a depth of 30 feet below existing grade to accommodate three levels of underground parking (214 parking spaces total), and thus its geotechnical consultant concluded that such excavation during construction would likely encounter groundwater perched on Purisima bedrock. Thus, relatively minor dewatering will be required during construction, which will be discharged into the storm drain system via the City's stormwater management plan and National Pollutant Discharge Elimination System (NPDES) permit issued by the Regional Water Quality Control Board (RWQCB). In addition, the City-approved project includes a Storm Water Control Plan, which will be required to demonstrate compliance with RWQCB's water quality treatment and runoff retention requirements. The City further required an

⁴² Past well testings between 1996 and 2009 at 325 Front Street, just west of the project site, were compiled into a groundwater monitoring report by Remediation Testing and Design.

“Operation and Maintenance Plan” to provide long-term stormwater control measures (i.e., during regular operation of the hotel) that will be incorporated into the City’s Design and Building Permit approval. Moreover, the project is required to adhere to California Building Code Standards regarding “damp-proofing and waterproofing” (i.e., for walls or portions of walls that retain earth and enclose interior spaces below grade) and these standards would similarly be reviewed and approved by the City as part of its Building Permit review process. In short, the project raises groundwater and flood risks similar to the many other projects either approved or under construction in the downtown area, there is no evidence that it will exacerbate or worsen off-site flood impacts as the Appellant alleges, and the City’s approval includes appropriate requirements to appropriately address such issues per the LCP.

And with respect to geologic hazards and site stability more broadly, as required by LUP Safety Element Policy 1.2.1, the Applicant completed a geotechnical investigation and found that the project could be safely developed provided the project incorporated certain report recommendations, including filling the site with imported soil free of organic matter/rocks or reusing materials excavated from the site, limiting grading activities to the dry season, installing a ground improvement system (i.e., the alteration of foundation soils to prevent earthquake liquefaction), and installing load-bearing below-grade walls. These report recommendations were incorporated as conditions of the City’s approval, and would be reviewed and approved during the City’s Building Permit stage. The City found the project to not raise any inordinate stability risks, included the recommendations of a site-specific geologic investigation into its approval and thus the project does not appear to raise any significant LCP conformance problem in this regard.

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

6. Biological Resources/Air and Water Quality

Applicable LCP Provisions

The LCP broadly protects biological resources and air and water quality; it includes protections to ensure that adjacent surface water quality is not degraded by new development; it requires that new development include stormwater drainage features to minimize urban runoff; it requires consideration of potential air quality impacts; it requires 100-foot setbacks from the center of watercourses; and includes bird, fish, and wildlife protections adjacent to waterways including specific bird-safe building design requirements:

LUP Environmental Quality Element Policy 1.1 (in part): ... review proposed land-use projects for their consistency with the AQMP and for potential air quality impacts.

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

LUP Environmental Quality Element Policy 2.3.1: Design and site development to minimize lot coverage and impervious surfaces, to limit post-development runoff to predevelopment volumes, and to incorporate storm drainage facilities that reduce urban runoff pollutants to the maximum extent possible.

LUP Environmental Quality Element Policy 4.2.2: Minimize the impact of development upon riparian and wetland areas through setback requirements of at least 100 feet from the center of a watercourse for riparian areas and 100 feet from a wetland. Include all riparian vegetation within the setback requirements, even if it extends more than 100 feet from the water course or if there is no defined water course present.

LUP Environmental Quality Element Policy 4.2.3: Minimize increased runoff into riparian and wetland areas unless biological evaluation recommends increased inflows.

LUP Environmental Quality Element Policy 4.2.5: Protect and minimize the impact of development on bird, fish, and wildlife habitat in and adjacent to waterways.

IP Section 24.12.127: Bird Safe Building Design Requirement. In all districts where new construction or exterior changes to the facade of buildings or structures requiring a planning permit are located within three hundred feet of any of the following: parcels with a General Plan land use designation of CR, PR, NA, or AG; an open waterway mapped in the City-Wide Creeks and Wetlands Management Plan; or any area within three hundred feet of undeveloped property likely to provide significant bird habitat, as determined by the zoning administrator, proposed buildings or structures shall be designed in a manner consistent with the published Bird Safe Building Design Standards as maintained by the city planning and community development department and as updated from time to time.

IP Section 24.14.080: Wildlife Habitats and Plant Communities. ...

3. ***Wildlife Habitats and Plant Communities.*** Construction, grading or removal of vegetation shall be permitted within wildlife habitats and plant communities where:

- a. *The development or project is in conformance with Section 24.08.2100 and with the policies of the City-wide Creeks and Wetlands Management Plan;*
- b. *Existing vegetation is preserved to the maximum extent possible;*
- c. *The integrity of the area as a habitat is not compromised;*
- d. *Landscaping is designed to provide a natural buffer and provide native food-bearing plant species to the greatest extent feasible;*
- e. *Protected species under the federal Endangered Species Act, the California Endangered Species Act, and the California Native Plant Protection Act are not present or jurisdictional permits from the*

appropriate state or federal agency have been received for their removal.

IP Section 24.14.274: Solid or Liquid Wastes. *No discharge of any materials of such nature or temperature as may contaminate any water supply, interfere with bacterial processes in sewage treatment, or otherwise cause the emission of dangerous or objectionable elements, shall be permitted at any point into public or private sewage systems, or streams, or onto or into the ground, except in conformance with the standards and limitations established by the State Department of Health, the Central Coast Regional Water Quality Control Board or the applicable sections of the Santa Cruz Municipal Code. No materials or wastes shall be deposited on any property in such form or manner that they may be transferred off the property by natural causes or forces...*

Citywide Creeks and Wetlands Plan – *Drainage from impervious surfaces shall be directed into a City-approved drainage system consistent with the City's urban runoff program and the City's Drainage Control Ordinance (i.e., the use of drainage swales, filter swales, small detention basins, percolation pits, and French drains)...*

Citywide Creeks and Wetlands Plan (in part) – *The following measures are encouraged to be implemented, as appropriate, to protect the water quality of watercourses and wetlands.*

- *Plant riparian vegetation in a manner to facilitate filtration of pollutants from storm runoff*
- *Encourage property owners to implement measures to decrease non-point source pollution including:*
 - o *Limit use of residential fertilizers and pesticides, particularly within the riparian corridor, consistent with Integrated Pest Management (IPM) principles*
 - o *Convert ornamental landscaping to native vegetation that requires less fertilizer and watering, consistent with IPM principles.*

Appeal Contentions

One Appellant contends that the City-approved project would degrade air and river water quality, including habitat for fish and wildlife. More specifically, the Appellant contends and raises the following questions: 1) whether light pollution from the hotel will adversely impact San Lorenzo River habitat; 2) how the project will appropriately protect migratory birds from crashing into windows, particularly given that the project is located adjacent to the San Lorenzo River, part of the Pacific Flyway; 3) that the project's landscaping including use of fertilizers and herbicides will percolate into the groundwater, ultimately contaminating the river water; and 4) whether groundwater/river water that seeps into the garage will be treated before being discharged back into the river.

Analysis

With respect to the Appellant's questions regarding light pollution and migratory bird protections, the City-approved project includes numerous measures, which are codified into the conditions of approval, to address such issues. Specifically, Condition 26(c) requires consistency with the City's Bird Safe Building Design Standards for building exteriors, which include: bird safe glass approved for use by the American Bird Conservancy; fritted and patterned windows; UV pattern film where appropriate; window nets and screens; other American Bird Conservancy approved products; and other design measures approved by a qualified biologist with a background in ornithology that will serve to protect birds (see pages 52-54 of **Exhibit 3**). Additionally, although not specifically related to the Appellant's contentions/questions, the project also includes pre-construction nesting bird surveys conducted by a qualified biologist if construction is scheduled to begin in nesting bird season (between February 1st and August 31st) to determine if there are any active nests present in or near the construction site. If nests are found, appropriate bird buffers as determined by the biologist shall be respected until the nest is no longer in use or the young have fledged, or construction shall be delayed until after the nesting season (see pages 53-54 of **Exhibit 3**).

With respect to lighting, Condition 26(j) prohibits any up-lighting or spotlights, and Condition 46 requires that non-emergency lighting be turned off or shielded at night to minimize lighting visible to birds, with special care given during periods of migratory bird activity (February to May and August to November). The Commission's staff ecologist, Dr. Rachel Pausch, reviewed the City-approved conditions, and determined that the project includes adequate protections to protect biological resources, including migratory birds. Therefore, the City-approved project appropriately implements LUP Environmental Quality Element Policy 4.2.5 and IP Section 24.12.127 Bird Safe Building Design Requirements, and thus the project satisfies the LCP's biological resource protection requirements including specifically as it relates to migratory birds and the project's potential for San Lorenzo River habitat impacts.

With respect to air quality, the Appellant alleges that the project will utilize diesel backup generators as a long-term solution to address groundwater seepage and that this approach will degrade air quality in the surrounding neighborhood. According to the City, the exact methods to address long-term groundwater seepage are unknown at this current time, but required to be specified as a part of Building Permit approval. In any event, it would be subject to the air quality conditions of approval typical of large-scale construction projects in the City and regulated by the Monterey Bay Air Resources District. Specifically, Condition 5 of the project approval requires compliance with the City of Santa Cruz limits regarding emission of odor, smoke, dust, and fumes, both during the construction phase of the project and during regular operation. Further, Condition 39 requires all diesel-fueled construction equipment to be zero-emission or equipped with California Air Resources Board (CARB) compliant engines (specifically of Tier 4 level or, if less (i.e., Tier 3 or Tier 2), equipped with filtration devices). As such, the project appropriately addresses air quality impacts as required by LUP Environmental Quality Element Policy 1.1.

Finally, the Appellant alleges that the project will result in adverse water quality primarily due to stormwater runoff from landscaped areas. Specifically, the Appellant contends

that the runoff will lead to discharge of fertilizers and herbicides into the San Lorenzo River and adjacent riparian areas, thus degrading the water quality and habitat therein. The LCP contains policies to minimize runoff into riparian areas and waterways, including via limiting fertilizer and herbicide use and ensuring adequate stormwater drainage in developed areas. Here, the City-approved project is located in an urban area with existing stormwater drainage systems that prohibit untreated runoff from discharging directly into the San Lorenzo River (i.e., runoff that enters the existing stormwater system is treated prior to being discharged). More specifically, any discharge is required to comply with water quality treatment and runoff retention requirements, including meeting the water quality requirements for the Post-Construction Stormwater Management Requirements (PCRs) mandated by the Regional Water Quality Control Board. California riparian and upland riparian species are integrated into the landscaping plan, as are bioretention landscape basins. In other words, the project incorporates coastal native and regionally adapted species with a focus on low water use and drought tolerance. In addition, the approved project would not use herbicides, pesticides, or other non-organic fertilizers within bio-retention areas and instead utilize hand-weeding and other integrated pest management techniques. Lastly, as a part of the building permit, the Permittee will submit a Storm Water Control Plan and a Landscaping and Irrigation Plan for the City's review and approval. Water quality appears to be adequately addressed and does not raise any significant concern.

For these reasons, the City's approval of a CDP for the project does not raise a substantial LCP conformance issue with respect to biological resources, air quality, or water quality.

7. Parking/Traffic

Applicable LCP Provisions

The LCP includes policies designed to maintain and improve traffic, circulation, and parking within coastal areas. The LUP emphasizes reducing the reliance on automobiles and improving pedestrian and bicycle connections in conjunction with new development. Regarding parking, the LUP requires that parking areas be distributed throughout the coastal recreation area to mitigate the impacts of overcrowding or overuse. Similarly, the LUP requires visitor-serving development such as hotels establish alternative transportation programs and tie-in to existing transit to minimize impacts on traffic, neighborhoods, and the natural environment:

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

LUP Land Use Element Policy 5.3.5: *Ensure that visitor-serving facilities are arranged and developed in a compact, integrated manner to reduce automobile circulation and emphasize pedestrian movement.*

LUP Land Use Element Policy 5.3.5.1: *Tie visitor-serving facilities in with potential shuttle and rail system improvements to offer opportunities for*

commercial economic expansion while ensuring reduced number of automobile trips.

LUP Land Use Element Policy 5.6: *Require land use development to integrate into the larger circulation system by interconnecting its system of roads, pedestrian, and bike paths with existing facilities and also design access to nearby areas in a manner that minimizes the necessity for automobile travel and potential automobile and pedestrian/bike conflicts.*

LUP Circulation Element Policy 1.7: *As a condition of development, expansion or change in land use, developers or employers shall mitigate their impacts on circulation (consistent with circulation planning policy and the CMP), provide incentives to enhance the use of alternative transportation and when necessary shall prepare transportation impact studies, and phase improvements to reduce traffic impacts and ensure that circulation facilities are adequate to serve the development.*

LUP Circulation Element Policy 1.7.1: *Reduce automobile parking requirements for developments/land uses that provide effective incentives for alternative transportation (mixed-use/neighborhood commercial areas, bus passes, subsidies, preferential carpool parking and shuttle services) and investigate ways to mitigate potential impacts on neighborhoods, possibly through residential parking permit programs.*

LUP Circulation Element Policy 6.2: *Develop a program to encourage visitor-serving developments such as hotels to have bicycles and shuttle programs available for patron use.*

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

In addition, the IP describes the specific parking requirements for hotel uses and also requires the provision of bicycle parking spaces in new development:

IP Section 24.12.240(1). Number of Parking Spaces Required: *1. Where the computation of required parking spaces produces a fractional result, fractions of one-half or greater shall require one full parking space... Commercial Retail: 1 stall per 250 square feet [sf]. Restaurant: 1 stall per 120 sf...Hotel: 0.25 space per unit.*

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

in compliance with the bike rack classifications listed in subsection (3). Fractional amounts of the type of parking facilities may be shifted as desired:

		Number of Bicycle Parking Spaces Required	Classification
	Retail/service or other commercial	1 per 1,000 square feet, minimum 2 spaces	20% Class 1 80% Class 2
	Restaurant/Bar	1 per 500 square feet, minimum 2 spaces	20% Class 1 80% Class 2
	Lodging	1 per 5 rooms/unit	10% Class 1 90% Class 2

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

Appeal Contentions

Two Appellants contend that the City-approved project did not properly evaluate traffic impacts, and that the project will negatively impact public parking. More specifically, the Appellants contend that: 1) the project will create direct competition for limited street parking, which in part serves as coastal access parking; and 2) the evaluation of traffic impacts was flawed, and the project will have a negative impact on traffic in the area, further impacting coastal access and safety. See **Exhibit 5** for the appeal contentions.

Analysis

Parking

The City-approved project would be constructed, in part, atop two existing downtown surface parking lots^{43,44} (totaling 50 marked parking spaces), and thus the project would eliminate those 50 existing parking spaces. The City-approved project includes 214 underground vehicle parking spaces, 68 Class 1 bicycle stalls, and 56 Class 2 bicycle stalls, all of which will be available for use by both hotel guests and the general public. Of the 214 parking spaces available, 13 of those spaces would be equipped with Electric Vehicle (EV) charging stations. The parking would utilize a valet system and automated parking; in other words, lifts would be used to park and retrieve vehicles by lifting the vehicle vertically and moving it to a designated parking space within the multi-

⁴³ Since approximately 2022, one of the parking lots has been used as a staging area for construction equipment for nearby residential development projects.

⁴⁴ The Applicant purchased the City owned land for \$ 2.05 million, and the revenue from the sale of the property is directed to the City’s Affordable Housing Trust Fund.

level parking system. The underground parking garage would be accessed from the ground level on Front Street via a covered entrance.

Under the LCP, and without any credits for shared (cooperative) parking or implementation of auto reduction programs, the project would be required to provide 58 onsite parking spaces for the hotel use, plus additional parking to serve restaurant, retail, and other commercial spaces on the site. Because the City-approved project would provide 214 parking spaces, the project would appear to more than satisfy the LCP's parking requirements. In terms of employee parking, the City required the preparation of an employee parking plan to detail on- and off-site parking opportunities for staff. The City thus found that the project would provide adequate parking including in terms of ensuring that parking availability is distributed throughout the downtown area.

Importantly, the project also aligns with the City's GHG reduction and non-vehicular transportation goals; the project is located adjacent to the main Santa Cruz Metro station, which provides bus transit across the County and to San Jose and Monterey. The City also provides a number of free or low-cost alternative transportation programs including the Santa Cruz beach shuttle and Go Santa Cruz County (an online commute management tool with various incentives for using alternative transportation including unlimited free transit cards, free BCycle memberships, and rewards those utilizing any method of alternative transportation including biking, carpooling, walking, and public transit with "Downtown Dollars" currency, which can be spent at most downtown businesses). The project, as noted before, also includes a host of significant bike and pedestrian improvements to the surrounding area, including a new public paseo at Maple Alley, extension of the San Lorenzo Riverwalk, and expanded sidewalks along Front and Laurel Streets. The project also includes free 90-minute bike rentals for the general public and hotel guests, and payments to the City to help subsidize the Santa Cruz beach and downtown shuttle. The intent of all of the transportation offerings is to help facilitate non-vehicular modes of travel, or, at a minimum, 'park once' strategies where guests park their vehicle upon commencement of their stay, but then walk, bike, and take shuttles/transit to their subsequent destinations, including easy bike rides to the beach along the separated bike lane atop the River, an easy walk to the Metro station to hop on a bus to various points in the City and County, and a quick walk to the rest of downtown. Therefore, the project does provide ample parking while also facilitating and incentivizing non-vehicular/non-single passenger trips. And thus, the project provides a host of LCP-required multi-modal transportation offerings, and does not raise any substantial LCP conformance issues.

Traffic

Two Appellants contend the project did not properly evaluate the project's impacts on traffic and circulation. More specifically, they argue that the project fails to reduce traffic impacts and/or mitigate such impacts, as required by the LCP.

The project included a traffic study that evaluated the traffic generation, intersection operations, street improvements, site access, on-site circulation, parking, and VMT for

the project site. The study concluded that the project would not lead to significant traffic impacts and in fact includes a number of pedestrian/sidewalk and street improvements. In terms of pedestrian access/safety, the Front Street and Laurel Street sidewalks directly adjacent to the project site would be widened to 12 feet and 8 feet, respectively, compared to their present 6-foot widths. Additional safety improvements for pedestrians and bicyclists include new pedestrian-scale lighting, improvements to the levee Riverwalk pathway, new directional curb ramps at the intersection of Front and Laurel Streets, and a new flashing alert system to notify pedestrians of vehicles exiting the hotel. Bike improvements would include a new Class II bikeway along Front Street.

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

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

8. Other

As noted earlier, one of the Appellants raises issues regarding the project's noise impacts. While noise issues are not directly governed by the LCP, a brief explanation of the project's noise impacts and mitigations are nevertheless explained below. The City-approved project included a noise study that assessed the existing environment and the project's anticipated construction and operational noise. The site is surrounded by residential projects currently undergoing construction, including improvements to the aforementioned Santa Cruz Metro station, as well as commercial/retail environments, all of which contribute to a mixed-use area⁴⁵. The site is bordered by two streets, which provide vehicular connections into and out of downtown. In terms of noise from the commercial components of the project affecting nearby residential uses during operation, the commercial uses are located along the ground floor of Front Street because the City's Downtown Plan prohibits residential and lodging uses on the ground floor. A café and retail space would be located along Front Street across the street from some of the existing residential buildings with similar first floor commercial uses, but

⁴⁵ Specifically, there are five residential projects in various stages of development (Anton Pacific Residential Development, Pacific Station South, Santa Cruz Metro Station/Pacific Station North, Front Street/Riverfront Residential Development, and 530 Front Street Residential Development).

these uses are not expected to produce excessive noise. Furthermore, the project is conditioned to implement the recommendations provided by the noise analysis (including assessing rooftop mechanical equipment by a qualified acoustical consultant during operation and, if necessary, implementing noise-reducing measures) and to comply with applicable State noise standards (CALGreen Code Section 5.507.4.3) and the City of Santa Cruz noise ordinance (non-LCP Municipal Code Section 9.36.010). Thus, it would appear that noise issues have been appropriately studied and addressed with the City's approval.⁴⁶

There will inevitably be noise during construction; however, the City-approved project is conditioned to limit construction activities between 8 a.m. and 10 p.m. except for construction processes that require extended hours (such as concrete pouring). Additionally, the City's conditions of approval require adjacent residents be notified of the construction schedule and be given contact info to address construction questions or concerns.

In conclusion, the City-approved project appears to appropriately mitigate noise impacts, and thus the City's approval of a CDP for the proposed project does not raise a substantial LCP conformance issue in this respect.

9. The "Five Substantial Issue" Factors

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity and/or Coastal Act public access conformity, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP and/or Coastal Act conformance. The Commission's regulations lay out the following five factors that it may consider when determining whether the issues raised in a given appeal are "substantial" (14 CCR section 13115(c)): the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In this case, these five factors, considered together, support a conclusion that the City's approval of a CDP for this project does raise a substantial issue of both LCP conformance and Coastal Act public access conformance.

In terms of factual and legal support, the City's record is voluminous, was reviewed by various deliberative bodies, includes significant and meaningful public benefits, and appears LCP consistent with respect to nearly all core coastal resource issues. And

⁴⁶ Given the urban downtown context, there is no evidence to suggest the project will have any significant adverse noise impacts on the surrounding River environment, or to public access amenities in the area (trails, sidewalks, etc.).

while the City and Applicant made a good-faith effort to include a host of meaningful lower cost accommodations elements, as noted in the preceding analysis, the lack of any on-site lower accommodations and a significantly undervalued in-lieu fee all suggest a rather significant deviation from what the Commission typically requires on this issue. At a minimum, it warrants the Commission to utilize its legislatively mandated discretion to further analyze the inconsistencies with this particular coastal resource matter given its importance in terms of supporting public coastal access for all. In light of this, the first factor suggests a substantial LCP conformance issue regarding lower cost accommodations.

In terms of the extent and scope of development, the project is quite large (a 232-room full-service hotel in the heart of downtown) and located in a prime downtown Santa Cruz location next to the San Lorenzo River and its bike/pedestrian connections to the rest of downtown and the beach. And while the majority of project components do not rise to a level of substantial issue (including public views, neighborhood compatibility, water quality, biological resources, seismic hazards, traffic/parking/circulation, public access, and compatibility with the Downtown Plan), as noted before, the insufficient lower cost accommodations package on such a large project in a prime location argues for a substantial issue determination.

In terms of potential precedential and prejudicial impact, 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 potential future applicants) might see the City's action here as precedential. And in fact, it is possible that such a decision could have ripple effects on nearby communities and their LCP implementation related to the City's interpretation of shared issues, particularly lower cost accommodations. Accordingly, the potential precedential and prejudicial impact of this case argues for substantial issue.

In terms of the significance of the coastal resources involved, a core mandate of the Coastal Act is to preserve, protect, and, where feasible, provide lower cost overnight accommodations and the project arguably does not do so.

Finally, in terms of whether the appeal raises only local issues as opposed to regional or statewide issues, the issue of lower cost accommodations is important locally as well as statewide given the general unaffordability of overnight accommodations in the coastal zone, both in the state and within Santa Cruz.

Taken together, the City-approved CDP for the project does not adequately address Coastal Act and LCP lower cost accommodations issues, and the five factors, individually, and on the whole, support a finding of substantial issue as to its conformity with the Coastal Act and the certified LCP. Thus, for the reasons stated herein, the Commission finds that Appeal Number A-3-STC-24-0016 raises substantial issues with respect to the City-approved project's conformance with the certified LCP and the public access policies of the Coastal Act and takes jurisdiction over the CDP application for the proposed project.

G. De Novo Coastal Development Permit Determination

The standard of review for this CDP determination is the City of Santa Cruz certified LCP. All Substantial Issue Determination findings above are incorporated herein by reference.

1. Proposed Project

On de novo review, the Applicant has modified their project. While its core elements remain the same as proposed and approved by the City as described previously, including in terms of it being a full-service hotel, the project has been reduced in size and scope from 232 hotel rooms to 190 and the underground parking has been reduced from 3 floors to 2 for a total of approximately 143 spaces. Building height, design, and other site planning elements remain substantially the same, as do most of the Applicant's proposed public access benefits and lower cost visitor-serving offerings (e.g., public paseo, Riverwalk levee, four off-site workforce housing units, financial contributions to the Santa Cruz Hostel and Boys and Girls Club, etc.).

As described in detail in the preceding Substantial Issue findings, and as discussed subsequently, the project can be found consistent with the LCP on numerous points, including with respect to basic site planning (allowed uses, building height, setbacks, parking, etc.), required affordable housing contributions (\$7270,500 contribution to the City's AHTF and four off-site affordable workforce housing units), public access and transportation requirements (new Maple Alley public paseo, Riverwalk extension area, sidewalk improvements, and free bike rentals and contributions to the City's downtown/beach shuttle), and overall design and integration into the downtown fabric. The project would fulfill a longstanding City goal to construct a full-service hotel in the downtown area so as to complement its existing mix of retail, restaurant, visitor-serving commercial, office, and, increasingly, residential uses.

Put another way, the primary substantive LCP compliance question regarding the City's approval was regarding lower cost accommodations. And as such, the most material change to the proposed project on de novo review is with respect to lower cost accommodations. In addition to the \$5 million fee to the City for off-site accommodations (still envisioned to be used for the proposed cabins at Greyhound Rock County Park), the Applicant now proposes to provide an enhanced lower cost package comprised of 20 on-site traditional hotel rooms at defined lower cost rates (i.e., \$150 per night in 2024 dollars, which can be adjusted for inflation moving forward, inclusive of all hotel fees but excluding any government-imposed taxes), and lower cost overnight stays at no more than \$80/night (in 2024 dollars, which can be adjusted for inflation moving forward) for lower income groups for 150 room nights per year (i.e., one traditional double occupancy hotel room for one night) as well as additional discounted rates for hotel employees, all as described in more detail subsequently.

2. Lower Cost Overnight Accommodations

As described in the Substantial Issue findings, the Santa Cruz LCP implements Coastal Act Section 30213 (and actually cross-references it) by requiring new lower cost overnight accommodations in cases such as this. While the LCP, like many others across the State, does not include a specific rate or definition for what qualifies as lower cost, nor does it include a specific amount of units to be provided in each proposal, as

described previously, the Commission in past actions has looked at 25% of the total development being lower cost, with lower cost rooms being no more than 75% of the statewide peak-season average. In fact, when the Commission approved a recent LCP amendment that modified development standards for the downtown area, including for this particular site, it made clear that a future hotel project at this site would need to provide sufficient lower cost accommodations in order to meet LCP requirements. The Commission's adopted findings state:

Thus, any future proposed visitor-serving project, such as the hotel that is being proposed locally currently, will need to meet the requirements of Coastal Act Section 30213 as implemented through the LUP regarding protection of lower/moderate cost visitor-serving facilities, including requiring mitigation for moderate and higher cost models.

There are various permutations to satisfy LCP requirements, including simply offering 25% of the rooms on-site at lower cost rates, or a combination of on-site, off-site, in-lieu fee, and lower cost overnight programming elements; regardless, the project components should amount to the analytical and functional equivalent of 25% of the development at lower cost, and the Commission's reviewing lens is whether and how a proposed lower cost package achieves this goal. It should also be noted that while a mix of lower cost elements can all serve as part of a comprehensive lower cost package, the Commission's preference and general expectation is that on-site lower cost units are a key part of that package, particularly for larger hotel projects like this one. Doing so meets the Commission's overarching goal of providing more equitable mixed-use/income accommodations types in the coastal zone and at a range of affordability, which is both a public access issue as well as an environmental justice issue. While in-lieu fees and off-site units can certainly be positive elements of a lower cost package, it is the Commission's experience that it can be quite difficult to ensure in-lieu fees are spent on actual new lower cost units. Thus, these types of elements have much greater utility when there is a specific project in mind and when offered in conjunction with lower cost units directly provided on-site.

In this case, the Applicant proposes 190 high-cost rooms, which would necessitate the provision of 47.5 lower cost ones (i.e., 25% of the higher cost rooms) whether on-site, in an off-site project (e.g., a 48-room lower cost hotel), or a fee (calculated for 47.5 rooms to be some \$20 million in this case).⁴⁷ In light of this, and in response to the articulated issues with the City's previous approval (namely the lack of any lower cost accommodations on site), the Applicant revised its lower cost proposal to include several parts. The first is to include 20 traditional, double-occupancy hotel rooms interspersed within the rest of the hotel. These units would be capped at 75% of the current statewide peak summer average, which as of 2024 is no more than \$150 per night and would be recalculated annually using the same metric. The second element is to provide a program for lower cost stays for targeted communities, including from

⁴⁷ Where that fee is inclusive of construction costs, land acquisition costs, and a 10% management fee, amounting to \$429,000 per unit, or \$20,377,500 for 47.5 units. The total fee must be adjusted for inflation up to the date of fee payment, using the CCI.

schools, underrepresented youth, and other underserved communities. The Applicant proposes to provide at least 150 room-nights per year⁴⁸ for such programming, where such stays would be provided at significantly reduced rates of no more than \$80 per night (using 2024 dollars, and adjusted for inflation using the California Consumer Price Index for Urban Consumers once annually), as well as discounted stays for hotel workers and their families. And lastly, the Applicant proposes to maintain the previous components of the City's approval, including the \$5 million in-lieu fee intended for the Greyhound Rock project, the \$50,000 contribution to the Santa Cruz Hostel Society, and four affordable/subsidized hotel employee housing units estimated in value at \$700,000 each.

The Commission's reviewing lens is thus to determine how this proposed lower cost package compares with 47.5 lower cost hotel units. To start, the Applicant proposes 20 on-site, traditional double-occupancy hotel rooms at lower cost rates of no more than \$150. These rooms meet the letter and intent of the Coastal Act and LCP with respect to the provision of lower cost accommodations, and meets the Commission's expectations and goals that hotel projects include a meaningful number of such lower cost units on site. Applying this element from the 47.5-unit obligation then leaves a 27.5-unit deficit, which the Applicant intends to meet through affordable workforce housing for the hotel's employees, lower cost stays to underserved communities, and a \$5 million in-lieu fee for off-site lower cost units.

Given that it can be somewhat of an apples-to-oranges comparison (i.e., comparing hotel units vs. fees and programmatic elements), a perhaps easier way to understand and evaluate these other proposed lower cost components is to assign them each a monetary value. And while it's acknowledged that there isn't a perfect or easy way to assign value to these components, doing so at least provides somewhat of an analytical equivalency for comparison purposes. At \$429,000 per lower cost hotel unit, this equates to about \$11.8 million for 27.5 units.

First, with respect to the four affordable workforce housing units, the Applicant intends to purchase four such units within City limits and rent them out to hotel employees at no more than 30% of their gross income. The units will be offered to the following groups based on a first right of refusal (i.e., the first group has the option to refuse such units, whereby the offer is then extended to the following group): (1) the hotel employees; (2) employees of other overnight accommodation establishments in the City; and (3) workforce housing for the broader public with a preference for very low- or low-income qualified households in the City of Santa Cruz. As mentioned, the Applicant indicates the cost of providing the four workforce housing units is about \$2.8 million, which can serve as the financial proxy for analytical purposes.⁴⁹ This element represents an interesting and somewhat novel approach. While not technically a lower cost accommodation, the fact that the Applicant is supporting a key element to make the visitor-serving economy function (i.e., by supporting hotel workers' housing expenses in

⁴⁸ Where one room-night is when one of the hotel's otherwise higher cost/market rate double-occupancy rooms is used for one night for lower cost overnight programming.

⁴⁹ Based on the average cost to construct a new affordable housing unit within the City of Santa Cruz.

such a high-cost area)⁵⁰ can broadly be understood as meeting the intent of the Coastal Act and LCP. As the Commission is well aware, ensuring that housing is affordable, attainable, and targeted to the workers that keep our coastal communities as thriving places for all to live, work, and visit, is a key objective that meets multiple Coastal Act and LCP goals. For any accommodation to be provided to the general public, it needs workers, and thus the affordable workforce housing contribution in this case can be credited to meeting the Applicant's lower cost accommodations requirements in that context.

As for lower cost programming, the Applicant proposes to provide at least 150 lower cost stays per year for those who traditionally may not be able to experience a coastal zone stay and related activities. This represents a meaningful lower cost accommodation benefit and is in line with the Commission's environmental justice principles and the objective of 'access for all'. As the Commission has found in recent cases, including for the American Tin Cannery hotel in Pacific Grove, the ability to provide lower cost group accommodations so close to the shore and in such a highly visible and prime coastal locale for schools, youth groups, and other underrepresented communities is something that strikes at the heart of the Commission's lower cost accommodations, public coastal access, and environmental justice mandates. To estimate the value of such programming, though, is a somewhat difficult endeavor. One approach is to evaluate the difference between what is charged for such programming (\$80 per night) versus the other market rate rooms (\$330 per night). This equates to \$250 per night, which is essentially the 'subsidy' the Applicant proposes for these units. When multiplied by 150 rooms per year for an industry-standard 40-year lifespan approximation (and assuming 3% annual inflation for all room rate values), this equates to about \$2.9 million.⁵¹ Again, while not a perfect proxy, it can serve as a way to put these important outreach/programmatic elements into financial form.

And finally, the Applicant proposes in-lieu fees for the creation of new off-site lower cost units of some \$5 million, with an additional \$50,000 contribution to the Santa Cruz Hostel Society for work on their Santa Cruz beach area hostel. Again, while in-lieu fees can certainly be a welcome element, they are most beneficial when the fee has a designated project in mind. In this case, and as noted before, the priority for the fee is to pay for an envisioned lower cost cabins project at Santa Cruz County's Greyhound Rock Park. While still in the planning stages and not yet permitted, the project envisions between 12-16 lower cost cabins. The cabins would be available to the general public for rent with targeted weekday youth education programming/overnight stays as well as complementary coastal access improvements. Lower cost overnight accommodations on the North Coast are severely limited to only a few walk-in campsites at Rancho del

⁵⁰ In a recent study, Santa Cruz County was ranked as the most expensive rental market in the United States, with an average income of \$63.33 an hour, or \$132,000 a year, needed to afford a two-bedroom apartment (see [2023 Out of Reach Report by the National Low Income Housing Coalition](#)). In July of 2023, the median sales price of homes in the county was \$1,268,500 (see [Compass Santa Cruz County August 2023 report](#)).

⁵¹ The Applicant also proposes lower cost stays for hotel workers, but the specifics of such a program are not defined as of yet, and thus it is too speculative to assign it a monetary value, even though it is an exciting proposition and something the Commission has indicated support of.

Oso located on the inland side of Highway 1 from Waddell State Beach and part of the greater Big Basin State Park along the entire 16-mile-long stretch of the North Coast. And thus, the proposed funding would help create new lower cost overnight accommodations in an area where such offerings are sorely needed. The project is estimated to cost around \$5.5 million (with approximately \$500,000 currently held by the State Coastal Conservancy for this project), and thus the proposed fee amount was developed with this project's cost in mind.

The value of all of these proposed elements (i.e., \$2.8 million for hotel worker housing, \$2.9 million for on-site programming, \$5 million for an off-site in-lieu lower cost cabin project, and \$50,000 for the Carmelita Cottages) yields about \$10.75 million, when the remaining 25% obligation was \$11.8, or about \$1 million short (i.e., the equivalent of about 2.5 rooms). However, when understood in relation to the other substantial public benefits being provided (e.g., public paseo and Riverwalk improvements, a new publicly accessible restroom facility, etc.), as well as a proposed hotel worker discount program, the collective package can be understood as meeting the Coastal Act and LCP's lower cost requirements.⁵² While some may argue that the Applicant should provide 48 standard double-occupancy hotel rooms on site at a lower cost to satisfy the LCP, the Applicant proposes a mix of lower cost amenities and accommodation types at a range of affordability (including programming and hotel worker discounts well below the lower cost rate), and that package can be considered by the Commission as well. The fact that the Applicant proposes 20 on-site lower cost hotel rooms is significant, including as it has been difficult in the Commission's experience to get fully integrated lower cost rooms as part of these types of projects, and there's a significant benefit to having that in this case. In addition, the four workforce housing units, on-site programming elements, hotel worker discount, and in-lieu fees targeted to a specific, critically needed lower cost project all perform different and unique lower cost functions, and each target a different type of user, ultimately providing a diverse portfolio of accommodation options. Together, the Applicant has proposed a significant lower cost visitor serving package where it can be considered adequate to satisfy the LCP's requirements.

As such, **Special Condition 4** codifies the Applicant's proposal, and includes important measures to ensure that these lower cost provisions are effectively carried out over time. Among other things, the condition specifies that the lower cost thresholds for the 20 lower cost rooms are caps,⁵³ and that all hotel fees, including parking, resort fees, and administrative fees, with the exception of government-imposed fees/taxes, are to be reflected/included in that price. The condition also specifies some minimum standards for the lower cost units, including that such hotel rooms must be at least 250 square feet (with a queen size bed or two twins) and all users of the lower cost hotel units are required to have access to the same amenities in the rest of the hotel as would any other paying guest, including those in the higher cost rooms.

The condition further requires a "Marketing and Outreach Plan", which will seek targeted outreach to the adjacent communities of Watsonville, Marina, Seaside, Del Rey Oaks,

⁵² Staff notes that the calculations are based on a range of assumptions, and thus the output values are approximations.

⁵³ And increased no more than yearly based on the same 75% statewide peak average metric.

Castroville, Prunedale, Salinas, Gonzales, Gilroy, and King City, and will require a notice or disclaimer to be included on the hotel's booking website, where the notice shall alert customers that the lower cost rooms and the underserved communities' reduced rate rooms are intended to be utilized by lower income visitors to the coast. The condition also identifies a hotel worker discount program to provide increased access to the coast for hospitality workers of the hotel. As for programming, while the condition is meant to be slightly broad in order to be nimble enough for flexibility in program elements, the condition does specify some overall minimum performance standards, including requiring at least 150 room-nights per year of group stays capped at the proposed \$80 (plus CPI adjustments) per room per night threshold,⁵⁴ specifying that the targeted clientele is those from lower income communities, communities of color, and other communities that have been historically marginalized and face greater barriers to coastal access, and requiring yearly monitoring reports that identify program effectiveness and group composition, along with the proposed programming for the upcoming year. In addition, the condition codifies that the project will provide four workforce housing units and caps such units at no more than 30% of worker gross income. The condition also requires yearly monitoring and a third-party audit every third year to help measure effectiveness of the lower cost provisions overall, as well as outreach to market such rooms to inland communities, including in Spanish and other appropriate languages.

Further, **Special Condition 5** codifies the Applicant's other mitigation offerings, including two contributions to the City's Affordable Housing Trust Fund (AHTF) totaling \$727,500, a one-time contribution to the Santa Cruz Boys and Girls Club of \$50,000, an annual contribution of \$10,000 for 10 years to the City to fund the Santa Cruz downtown and beach shuttle program, and programming to allow underserved groups to utilize the hotels conference and rooftop facilities. While the financial contributions are specific amounts to be paid, the programming is intended to be broad in order for different non-profit organizations to make use of the spaces for a minimum of three nights during the year. Lastly, the condition requires an end-of-year check in to the Executive Director to ensure such conditions have been met.

And finally, as the Commission typically requires for overnight accommodations projects, **Special Condition 6** requires that all overnight accommodations (hotel rooms and family suites) be open and available to the general public, that rooms shall not be rented to any individual, family, or group for more than 29 consecutive days and that no individual ownership or long-term occupancy of hotel rooms shall be allowed. To further ensure that the hotel operates as proposed and approved, **Special Condition 6(b)** prohibits the conversion of any of the hotel overnight rooms to limited-use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project, as well as requires annual monitoring reports to ensure same.

In conclusion, the Applicant has proposed a meaningful package of lower cost overnight accommodation benefits that can serve to make a trip to Santa Cruz's coastal zone

⁵⁴ Importantly, the overnight programming will be in market rate rooms and not the 20 lower cost ones.

more achievable for all, including those in lower income brackets. The package is also quite broad and encompassing, targeted to families, hotel workers (including via affordable workforce housing), and underserved communities. The Commission welcomes – and prefers – these types of packages when they include a significant on-site lower cost component and a suite of complementary measures as a means of addressing Coastal Act and LCP lower cost overnight accommodation issues. Therefore, the project as conditioned can be found consistent with the LCP.

3. Site Planning, Community Character, and Public Access

As described in the Substantial Issue section previously, the LCP requires compatibility with specific neighborhood requirements, including requiring development to be compatible with its built and natural environment surroundings and otherwise ensuring development does not significantly adversely impact significant public views while maximizing land intensity or density in infill areas. To meet these overarching objectives, the LCP specifies that all development standards (including with respect to height, setback, density, lot coverage, etc.) must be interpreted as maximums (such as for height) or minimums (such as for setbacks) that are required to be reduced (or increased) to protect and enhance coastal resources to the maximum extent feasible. And for the project site specifically, development needs to include sufficient articulation and massing to avoid the appearance of domineering over the adjacent public realm.

In addition, because the project site is located adjacent to the San Lorenzo River and is an important gateway between downtown and the City's main beaches, the LCP speaks to providing significant public access amenities at the site including to improve bicycle/pedestrian connectivity and better integrate new development with the Riverwalk. In other words, the LCP requires some of the allowed site coverage to be programmed for public parks, outdoor recreation areas, and similar public access amenities to maximize public recreational access and utility at this site. With such requirements, and with the overall understanding that the LCP mirrors the Coastal Act in terms of the requirement to maximize public recreational access opportunities, the issues of access and character are largely intertwined. In short, the project needs to respect its surroundings and ensure that public access is an intrinsic part of the project.

Analysis

As described previously, while the overall site plan and design aesthetic has largely been retained from the City-approved version, the Applicant has made some modifications, including to reduce the overall number of rooms at the site (from 232 to 190) and therefore eliminate a level of underground parking. These changes help reduce project construction cost, which then helps to provide for the substantial proposed lower cost accommodations package as well as broader public access and transportation improvements. In addition, the Applicant has also modified certain public access elements to better meet LCP objectives, including by now providing direct access from the ground floor to the roof, which itself will be open and available for public enjoyment with a lounge area and bar. The roof area will aid in public enjoyment and offer an exciting opportunity for the general public to obtain expansive views of downtown, the Santa Cruz Mountains, and out to Monterey Bay from an elevated vantage point. In addition, the ground floor public restroom will be accessible from both the street and the Riverwalk by the general public and without having to venture deep

into the hotel itself. Having a readily accessible public restroom, particularly as the City fully realizes its vision for revitalizing the Riverwalk and its lower downtown area, is an important public benefit.

The Applicant firmly believes that the proposed design and access offerings will materially benefit this site over the status quo (which is a surface parking lot and one story general commercial structure) and meet the LCP's requirements for the public and not just hotel guests. The Commission concurs. While reasonable people can – and often do – disagree when it comes to matters of design and community character, in this case and given the context, the Commission agrees with the Applicant's assessment. While the project is still quite large, it is also an envisioned use in an urban downtown Santa Cruz context that will fit in with the surrounding aesthetic and provide a host of important public benefits that will dramatically increase public use and enjoyment of the site and surrounding area, including critically the San Lorenzo Riverwalk. In sum, the project will provide for some pretty substantial public access benefits that will materially benefit the public, and will do so with a design approach that similarly respects the character of the area as much as possible for a large project of this type.

Special Condition 1 thus approves the proposed site plan and overall design, and includes a series of conditions and performance standards to ensure consistency with LCP design requirements, including final plans that specify landscaping (e.g., only using native and non-invasive species to provide for visual softening and screening of structural development), signage (e.g., reducing their number and visibility, and using natural materials and earth tones to effectively blend in with the surrounding aesthetic), lighting (e.g., using wildlife friendly lights facing downward and shielded to prevent light spill and glare), utilities (e.g., placing them underground or away from public view), and windows (e.g., using non-glare and bird safe glass) to all be compatible with the overall area design aesthetic. Further, **Special Condition 2** includes the Commission's suite of typical best management practices to ensure that construction activities avoid adverse coastal resource impacts, including on water quality and **Special Condition 8** also protects coastal water quality and habitats through a required Plastic Reduction Program to minimize single-use plastics in all aspects of hotel operations. And **Special Condition 3** codifies the proposed public access amenities via a Public Access Management Plan, with provisions to ensure that such amenities (e.g., the public paseo, outdoor extension space, and public restroom) are clearly identified on final plans, adequately signed to alert the public of these spaces, include appropriate amenities to aid in their enjoyment (e.g., benches, picnic tables, and trash cans), and maintained over time to maximize their use and utility in this regard.

To further ensure that the project addresses traffic and multi-modal transportation requirements, **Special Condition 7** requires the preparation of a Transportation Demand Management Plan that requires, among other things, commuter information to reduce single-occupant car trips for workers, such as information on the City's plethora of free and low-cost alternative transportation programs for downtown employees, as well as public transit information and free bikes for guests to accomplish same.

As proposed and as conditioned, the project meets the LCP's requirements for general site planning and public access provisions overall, as well as the specific directives for

this particular site as identified in the LCP's Downtown Plan. The end result is a project that should be a measurable improvement over the status quo and one worthy of this prime downtown and river-adjacent setting.

4. Other

Archeological/Cultural Resources

An archaeological assessment was included as a part of the project application and found that the project location has the potential for archeological resources. Given the project site's location adjacent to the San Lorenzo River, prehistoric resources have been recorded to the immediate south of the project site. Furthermore, the site is situated within an area known to have historic resources from the early American development period (1860s – 1880s). The Santa Cruz region is represented by the Ohlone (Costanoan)-affiliated Tribes, which is comprised of enrolled tribal members of Amah Mutsun, Costanoan Ohlone Rumsen-Mutsen, Indian Canyon Mutsun, Muwekma Ohlone, North Valley Yokuts, Tamien, and/or Ohlone Indian descent.

Special Condition 9 includes the Commission's typical archaeological protection protocols, including potential stop work orders during construction should artifacts/human remains be uncovered, and which must be identified on all required construction plans. As conditioned, the project can be found consistent with the LCP's archaeological/cultural provisions.

Other Agency Approvals

To ensure that the Applicant has a sufficient legal interest to carry out the project consistent with the terms and conditions of this CDP and to ensure that the proposed project is authorized by all applicable regulatory agencies, **Special Condition 10** requires the Applicant to submit written evidence either of these other agencies' approvals of the project (as conditioned and approved by this CDP) or evidence that such approvals are not required. **Special Condition 11** also specifies that the Permittee shall follow all other requirements and conditions imposed by the City of Santa Cruz pursuant to their non-Coastal Act authorities (e.g., Design Permit, Building Permit, etc.). If there is any conflict, however, between those conditions and this CDP, this CDP shall govern.

Future Permitting

The Commission herein fully expects to review any future proposed development at and/or directly related to this project and/or project area, including to ensure continued compliance with the terms and conditions of this CDP through such future proposals, but also to ensure that any such future proposed development can be understood in terms of same. Thus, any and all future proposed development at and/or directly related to this project, this project area, and/or this CDP shall require a new CDP or a CDP amendment that is processed through the Coastal Commission, unless the Executive Director determines a CDP or CDP amendment is not legally required (see **Special Condition 12**).

Minor Changes

This CDP authorizes the project proposed except as modified by the special conditions. As is typical of large and complicated construction projects like this, there can be the need for minor changes as circumstances dictate. Thus, this approval allows for such changes through either (a) a CDP amendment, or (b) if the Executive Director determines that no amendment is legally required, then such changes may be allowed by the Executive Director if the Executive Director determines that such changes: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources (see **Special Condition 13**).

Indemnification

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its actions on the pending CDP applications in the event the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 14** requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this CDP, or challenging any other aspect of its implementation, including with respect to condition compliance efforts.

Deed Restriction

The terms and conditions of this approval are perpetual and run with the land, thus binding any future buyers and owners of the properties subject to this CDP. This approval is also conditioned for a deed restriction to be recorded against the property involved in the application (see **Special Condition 15**). This deed restriction will record the conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property.

H. California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(a) prohibits a proposed development from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the development may have on the environment. CEQA further requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve a project. If the specific benefits of a proposal outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

The City of Santa Cruz, acting as the CEQA lead agency, found the project to be exempt from CEQA requirements and issued a Categorical Exemption for the project pursuant to State CEQA Guidelines Section 15305 and 15302, for minor alterations in land use and infill development projects, respectively, and that none of the potential exceptions to the use of a categorical exemption, as set forth in CEQA Guidelines Section 15300.2, apply to this project or project site.

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

5. APPENDICES

A. Substantive File Documents⁵⁵

- Coastal Commission Appeal File A-3-STC-24-0016 (Cruz Hotel)

B. Staff Contact with Agencies and Groups

- City of Santa Cruz Planning & Community Development Department
- Santa Cruz County Parks Department

⁵⁵ These documents are available for review in the Commission's Central Coast District office.