

Public Comments

Agenda Item 9

Written Comments Received By 12pm on 8/8/2022



August 8, 2022
City Council Meeting

From: Mark Hubbell [REDACTED]
Sent: Sunday, August 7, 2022 3:57 PM
To: Public Comment
Subject: CONSENT AGENDA - to approve the ACLU settlement offer

[CAUTION: External Email]

Good day Council-members and staff.

Long before receiving this message, I've had concerns regarding the apparently dysfunctional relationship between Pacifica and important state regulatory agencies.

The expectation that Pacifica Citizens' tax dollars are conveniently available for The City's use in advancing the political agendas of unelected individuals or stakeholders is clearly inappropriate. Please address this issue in the August 8th Council Meeting to clarify a right-minded path forward.

Thank you,

Mark

Pacificans have concerns with Item 9 of the consent calendar on Agenda with City Council on 8/8/2022. Council needs to address with the community the following before approving the item.

1. There should be a community meeting about the resolution of this issue as a whole. How will this program be implemented without further grievances.
2. How will the fines and added legal expenses be funded?
3. How does this impact the structural deficit?
4. Why is staff moving ahead with solutions knowing there is an issue with the Coastal Commission.
5. Why did City Legal approve this program not once but twice?

--

Mark Hubbell — phone: [REDACTED] — email: [REDACTED]

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From: Remi Tan [REDACTED]
Sent: Monday, August 8, 2022 8:43 AM
To: Public Comment
Subject: 8/8 Council meeting consent agenda item 9. Oversize vehicle parking

[CAUTION: External Email]

Pacificans have concerns with Item 9 of the Consent Calendar on Agenda with City Council on 8/8/2022. The Council needs to address with the community the following before approving the item:

1. There should be a community meeting about the resolution of this issue as a whole. How will this program be implemented without further grievances.
2. How will the fines and added legal expenses be funded?
3. How does this impact the structural deficit?
4. Why is staff moving ahead with solutions knowing there is an issue with the Coastal Commission.
5. Why did City Legal approve this program not once but twice?

As we all know Pacifica is well on its way to a structural deficit and is bankrupt basically, but City Council approved an expensive oversize vehicle parking ordinance without fully understanding legal consequences which now are resulting in sizable monetary damages piling up against Pacifica around this oversize vehicle ordinance.

This ordinance has now resulted in a lawsuit with the ACLU - which is now costing over \$850,000. - The \$550,000 the ACLU settlement offer that is this Consent Agenda Item. which part of the settlement includes refunding some of the fines collected. Plus the \$300,000 current cost of administration and legal expenses that has already been incurred for this ordinance - which a ridiculous cost for the only 13 permitted RVs - whose occupants could have been housed in permanent housing for this cost!

Just think of the good this \$850,000 could have done to help Pacificans stay housed instead. And yet the 3 council members who approved the ban with no safe parking program in place said the city had very little money to help our homeless. They had even been warned we would be sued. Mary Bier and Deidre Martin were on the right side of this decision, but were unfortunately outnumbered 2-3 when the ordinance was voted in.

The ordinance has resulted in some very unhappy neighbors & VIOLATIONS with the California Coastal Commission. At least 3 of the locations fall within the purview of the Coastal Commission. And the Coastal Commission indicated that the ordinance would be in violation yet Pacifica did it anyway. 1 location is under appeal with Pacifica City Council and 2 appeals have hearings with the Coastal Commission on August 18, 2022. The Coastal Commission report indicates - in much details - the findings against Pacifica, including the fact that Pacifica Planning staff was told this would be a problem. These violations with the California Coastal Commission will likely add additional legal expenses, fines and cost to redo the ordinance to comply with the coastal commission and address neighbor concerns.

Another thing the city has overlooked is that many of the homeless who are causing messes where they camp are living out of cars, vans, SUVs which are not oversize vehicles and would not be covered under the ordinance. For example it was reported that there was a homeless family of 4 who just left Esplanade after staying a few days and left two shopping carts of trash, scattered trash and urine all over the place where they were parked. This trash and human waste is still there as of yesterday evening.

The council should be taking the following actions on 8/8 today on this Agenda Item 9 instead of paying out this settlement with the ACLU

1. Remove the item 9 from the Consent Calendar.

2. Immediately rescind the RV parking ordinance and return fines that were collected from the homeless so they can get food and housing - This should address the concerns in the ACLU lawsuit
3. Have Pacifica Police resource officers enforce the existing parking regulations that ban parking of any vehicle for more than 3 days and send public works to clean up the trash and human waste . This should address neighborhood concerns about safety and the mess from homeless camping and sleeping in vehicles of any size.
4. Use the money saved from payout of the ACLU lawsuit and from administering the ordinance to immediately house the homeless that would be now illegally parked in permanent housing and to extend help to them through Pacifica Resource Center and local mental health and social workers.

Moving forward the city should take the following actions

1. Work with the RV park to reopen their sewage dump stations and water refill for non park residences - this would allow our local residents who want to have family or friends in need of housing to park their RVs in their driveway or side yards to have a place to properly dump the RV's sewage and refill the water tanks. To use the existing RV park's station makes much more sense than having costly the roaming sewage truck that was serving only 13 RV's under the ordinance.
2. Look at what underused city parking lots and land can be used for a proper homeless RV and car camping site away from residences, schools and businesses, and have properly noticed public hearings on this to address any neighborhood or Coastal Commission concerns.

Thank you and Best Regards,

Remi Tan, AIA, LEED AP BD+C
Architecture, Green/Sustainability Consulting, and Real Estate Investment

25 year resident at
[REDACTED]
Pacifica, CA 94044

[REDACTED]

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Public Comments

Agenda Item 11

Written Comments Received By 12pm on 8/8/2022



August 8, 2022
City Council Meeting

From: Vicki Sundstrom [REDACTED]
Sent: Monday, August 8, 2022 11:11 AM
To: Public Comment
Subject: City Council 8/8/2022 Agenda Item # 11 - Fehr & Peers for Local Roadway Safety Plan

[CAUTION: External Email]

While it's good to see a traffic study finally taking place, it would have been good to have actually involved the community to hear about our safety concerns and account for them in the scope of work.

Please plan on:

1. A community meeting outlining the scope of work, and milestone meetings so we can all be informed of what is going on.
2. Provide community engagement dates and outreach efforts ahead of time.
3. Promote the study and related meetings at least 3 weeks in advance so people can be involved.
4. Please include me as one of the attendees for all the meetings and provide a schedule ahead of time.

Regards,

Vicki Sundstrom
Fairmont - District 1.

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From: Coffey, Sarah
Sent: Monday, August 8, 2022 2:09 PM
To: Public Comment
Subject: FW: : City Council 8/8/2022 Agenda Item # 11 - Fehr & Peers for Local Roadway Safety Plan

-----Original Message-----

From: Armetta Parker [REDACTED]
Sent: Monday, August 8, 2022 1:38 PM
To: _City Council <citycouncil@ci.pacifica.ca.us>; Coffey, Sarah <scoffey@pacifica.gov>
Cc: Woodhouse, Kevin <kwoodhouse@pacifica.gov>
Subject: : City Council 8/8/2022 Agenda Item # 11 - Fehr & Peers for Local Roadway Safety Plan

[CAUTION: External Email]

Dear Council and City Staff:

It is my understanding that Vicki Sundstrom (Fairmont - District 1) has requested that she be informed and included in future meetings with the traffic/transportation consultants employed by Pacifica.

Vicki is a transportation engineer with extensive expertise in traffic surveys. With the ongoing staff shortages, the city should welcome the volunteer support of its residents with experience in practice areas where there is no internal bandwidth.

I encourage you to utilize the resources (residents) we have as a way to support your fiduciary and legislative obligations to manage the city.

Good governance is open, transparent and encourages civic engagement; not closed, opaque and disdainful of public participation.

Thank you,,

Armetta Parker
Westview - District 2

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Public Comments

Agenda Item 14

Written Comments Received By 12pm on 8/8/2022



August 8, 2022

City Council Meeting

From: Robin R. Baral [REDACTED]
Sent: Friday, August 5, 2022 2:43 PM
To: _City Council; Public Comment
Cc: Adrienne Carr; Patrick T. Miyaki; Michelle Kenyon [BWS Law]; Bazzano, Denise; Woodhouse, Kevin; Murdock, Christian; Coffey, Sarah
Subject: Comments to Public Hearing - Appeal – 2400 Francisco Blvd, CDP-437-22 (File No. 2022-012)
Attachments: Comment Letter re CDP Appeal.pdf

[CAUTION: External Email]

Good afternoon- please see the attached comment letter, submitted on behalf of North Coast County Water District in connection with the above-referenced appeal hearing scheduled for this Monday.

Robin R. Baral
Senior Counsel
Hanson Bridgett LLP



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ROBIN R. BARAL
SENIOR COUNSEL
DIRECT DIAL [REDACTED]
E-MAIL [REDACTED]



August 5, 2022

VIA ELECTRONIC MAIL ONLY
citycouncil@pacifica.gov

City of Pacifica
City Council
170 Santa Maria Avenue
Pacifica, California 94044

Re: Appeal of Coastal Development Permit CDP-437-22

Dear Honorable Mayor Bier and Distinguished Councilmembers,

Our office represents North Coast County Water District ("District") and we submit this comment letter on its behalf as a supplement to the appeal that was submitted to the City of Pacifica ("City") on May 26, 2022. The District appeals the Planning Commission's decision granting Coastal Development Permit ("CDP") 437-22 to establish a parking space for the City's Temporary Safe Parking Permit Program ("TSPP Program") in front of District headquarters at 2400 Francisco Boulevard and within the Coastal Zone. In addition, since the CDP hearing, new information has arisen involving the California Coastal Commission that is directly relevant to this appeal, and is included in this supplemental letter. (See Attachments A and B.) The position of Commission staff, that implementation of the TSPP Program potentially violates the Coastal Act, requires the City Council's consideration in connection with this appeal.

The District supports the City's efforts to address the homelessness crisis in the City. However, since July 2020, the District has expressed concerns with the selection of 2400 Francisco Boulevard as a host site for TSPP Program participants to live in oversized vehicles. The District has endeavored to work collaboratively with the City to identify alternate sites, and over the past few months the District has proposed allowing the use of District property and rights-of-way, such as the Skyline tank site, Christian Hill tank site, and Nelson tank site. It is truly unfortunate that the City staff has largely rebuffed the District's efforts at collaboration and has instead opted to move forward with this appeal. Further, the City's position that site relocation should not be considered part of this appeal has no merit, given the Coastal Commission's position, as restated below. The basis of this appeal involves whether the City is authorized to approve the appealed CDP within the Coastal Zone. The District's legal position is in alignment with Commission staff that the City does not currently have such authority.

Accordingly, the District requests that the City Council deny CDP 437-22, and direct staff to implement the TSPP Program by identifying an alternate site that is outside of the Coastal Zone, on the basis that the Planning Commission's approval of the CDP at 2400 Francisco (1) violates the Coastal Act; (2) violates the California Environmental Quality Act ("CEQA"); (3) will significantly impact District operations and its customers; and (4) moreover, will result in unnecessary hardship to potential TSPP participants due to the District's planned major renovation of its headquarters.

Hanson Bridgett LLP
425 Market Street, 26th Floor, San Francisco, CA 94105 hansonbridgett.com

18791325.4

No CDPs May Approved for the TSPP Until the Coastal Commission Appeals Have Been Heard, and the Commission’s Potential Enforcement Action Has Been Resolved

As the City is surely aware, the California Coastal Commission has calendared its consideration of the appeals to several CDPs issued by the City in connection with the TSPP Program. The July 29, 2022, Commission staff report makes clear their position (as likely informed by their legal counsel) that the City’s TSPP Program and Oversized Vehicle Parking Ordinance (“OVO”) violate the Coastal Act. More importantly, and directly related to this appeal, the Commission staff report clearly advises that the City should not issue any CDPs for temporary parking within the Coastal Zone until the Commission finds the Oversized Vehicle Program compliant with the Coastal Act. (See staff reports, page 13.) The report recommends that a full de novo hearing be held before the Commission, at a later time to be determined by Commission staff after their full investigation of potential violations under the Coastal Act has been completed.

In order to validly implement the Oversized Vehicle Ordinance, and the resulting TSPP Program within the Coastal Zone, the City must (1) amend its certified LCP or issue a CDP for the Ordinance, and (2) comply with the California Environmental Quality Act (“CEQA”). As the Commission staff report notes, however, the OVO and TSPP Program raise significant concerns that they violate the Commission’s environmental justice policy by restricting access to coastal areas for the unhoused. Per the staff reports, the Commission has notified the City of this violation and is undergoing an enforcement review of the OVO and TSPP Program.

Approval of CDP-437-22 therefore violates the Coastal Act, not only due to the reasons set forth in the District’s appeal, but also because of the reasons stated in the Commission staff reports. By including the following attachments, the District raises all similar issues raised by the Commission staff reports, but in connection with this appeal. While the Francisco Street host site is not within the area of the Coastal Zone appealable to the Commission, the issues raised by the Commission may be challenged via citizen enforcement of the Coastal Act under the private attorney general doctrine, which includes a potential award of attorney’s fees to the successful petitioner. Accordingly, the District requests that the City abide by the Commission’s urging not to issue any CDPs until the Commission’s enforcement action is concluded. As a result, the City should accept the District’s appeal and deny CDP-437-22 for the Francisco Street site. Further, the District requests that the City Council direct its staff to relocate the Francisco Street site to a location outside of the Coastal Zone.

The CEQA Exemptions Asserted by the City Are Legally Invalid

The City violated CEQA by approving the CDP through the use of CEQA exemptions. The City improperly relied on the Class 1 existing facilities exemption, the Class 4 minor alterations to land exemption, and the common sense exemption. In addition, as noted above, the City failed to comply with the Coastal Act when it adopted the OVO and TSPP, therefore the City’s amendment of the LCP or issuance of a CDP for the OVO will also require CEQA compliance in order to ensure the City’s legally valid implementation of those programs under the Coastal Act.

The Class 2 existing facilities exemption is inapplicable here because it only applies to activities “involving negligible or no expansion of existing or former use.” (14 Cal. Code Reg., § 15301.) The City’s only finding regarding application of this exemption erroneously concluded that the City would continue to use parking areas for parking, ignoring the new impacts that would result from permitting habitation in oversized vehicles on public streets for the first time. The District acknowledges that oversized vehicles may currently park for up to 72 hours under existing City

policies, notwithstanding the TSPP Program. The decision to extend parking from 72 hours, to up to 3 years, is clearly not a “negligible” expansion of the previous parking allowance. Moreover, unlike regular vehicle parking, oversized vehicles used by the unhoused may have the potential to result in environmental impacts including, but not limited to, impacts from the collection and disposal of grey and black water, garbage accumulation and disposal, fire hazards due to unsafe power supply, and fuel leakages. While the City notes in its staff report provisions of the TSPP that could accommodate these concerns, it is legally indefensible to insert these findings as a basis for a CEQA exemption or in response to the District’s appeal. CEQA requires this analysis and related findings to be made as part of an Initial Study/Negative Declaration or other appropriate CEQA document, given that the CEQA exemptions do not apply in this case.

The Class 4 exemption for minor alterations to land is also inapplicable to the CDP. This exemption is intended to apply to the “minor temporary use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.” (14 Cal. Code Reg., § 15304, subd. (e).) While the CDP is “temporary,” it is a three-year project with the prospect of renewal. While the City’s staff report claims that this exemption applies because TSPP Program parking sites are currently used for oversized vehicle parking, the City misses the mark because, here, the CDP’s three-year duration clearly exceeds the referenced short-term duration for Class 4 projects, such as carnivals and Christmas tree lots.

In conclusion, for both the Class 1 and Class 4 exemptions, the City here is not physically altering or improving any roadways, but is instead approving a new use on public right-of-ways that would otherwise not be permitted. Therefore, the CDP does not fit within the definition of “facilities” under the Class 1 or Class 4 exemption, as the authorization to allow a semi-permanent residential use on a public right-of-way does not fit within these exemptions.

Finally, the “common sense” exemption does not apply because it cannot “be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” (14 Cal. Code Reg., §15061, subd. (b)(3).) The City’s staff report claims that the District has not provided any evidence of potential environmental impacts. However, the City need only look to its own findings in its 2020 adoption of the OVO, which contain substantial evidence that the CDP may have significant impacts on the environment. As noted by the Commission in its staff report, the OVO and TSPP Program have a direct link, due to the TSPP Program being adopted directly as a result of legal challenge to the OVO by the ACLU. In adopting the OVO, the City found that parking oversized vehicles on City streets had potential to cause traffic hazards and pose serious health risks. This finding is supported by Appendix G to the CEQA Guidelines, which directs the City as the lead agency to evaluate potential transportation impacts in cases where a project would “increase hazards due to a geometric design feature,” such as an oversized vehicle that could negatively impact intersections. These potential impacts were not discussed, however, in connection with this CDP.

Moreover, the Commission has raised significant issues with the City’s implementation of the OVO and TSPP Program under the Coastal Act. The District likewise contends that issuance of the CDP would impermissibly conflict with an adopted plan or policy of the City, namely the City’s adopted LCP. Regardless of the outcome of any potential enforcement action by the Commission, the Commission staff report raises a “substantial issue” with issuance of CDPs in furtherance of the TSPP. The Commission staff report therefore provides substantial evidence that clearly meets the “fair argument” test under CEQA. The City would be wise to consider the Commission’s position and conduct a legally valid environmental review in connection with the

issuance of the CDP and its overall adoption of the TSPP Program, along with its requirement to adopt a CDP or LCP amendment in connection with the OVO. The City has unlawfully segmented environmental review in connection with the issuance of this CDP, given that the City has not reviewed the potential environmental impacts of the OVO/TSPP pursuant to its requirement under the Coastal Act to amend the LCP or issue a CDP for the OVO.

In conclusion, the above CEQA exemptions are inapplicable to the issuance of the CDP, therefore the City is required to prepare an Initial Study and disclose to the public the impacts of the CDP either through a Negative Declaration or Environmental Impact Report.

Conclusion

The District respectfully requests that the City Council deny the CDP and direct City staff to identify an alternate site outside of the Coastal Zone for the reasons stated above, in the District's initial appeal, and on the basis of any additional evidence or testimony that may be presented by the District or any other member of the public during the appeal hearing.

While the District is fully prepared to proceed with this appeal hearing, please do not hesitate to contact me if the City wishes to discuss this matter further.

Very truly yours,



Robin R. Baral

NCK

cc: Adrienne Carr, NCCWD General Manager
Board of Directors, NCCWD
Patrick Miyaki, NCCWD General Counsel
Michelle Marchetta Kenyon, City Attorney
Denise Bazzano, Burke Williams Sorensen
Kevin Woodhouse, City Manager
Christian Murdock, Deputy City Planner
Sarah Coffey, City Clerk

Attachments:

- A. Staff Report: Substantial Issue Determination F7a (Appeal No. A-2-PAC-22-0029).
- B. Staff Report: Substantial Issue Determination F7b (Appeal No. A-2-PAC-22-0031).

Attachment A

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
 455 MARKET STREET, SUITE 228
 SAN FRANCISCO, CA 94105
 PHONE: (415) 904-5260
 FAX: (415) 904-5400
 WEB: WWW.COASTAL.CA.GOV



F7a

Appeal Filed:	6/22/2022
Action Deadline:	8/31/2022
Staff:	OR - SF
Staff Report:	7/29/2022
Hearing Date:	8/12/2022

STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number: A-2-PAC-22-0029

Applicant: City of Pacifica Public Works Department

Appellant: Jeff Guillet

Local Government: City of Pacifica

Local Decision: City of Pacifica Coastal Development Permit Application Number CDP-439-22, approved by the City Planning Commission on May 16, 2022

Project Location: Along Bradford Way between Sharp Park Golf Course and Highway 1 (just east of 2600 Francisco Boulevard) in the City of Pacifica, San Mateo County

Project Description: Establish two on-street oversized vehicle-only parking spaces, including minor right-of-way improvements (such as signs, poles, and pavement markings) along Bradford Way for a period of three years

Staff Recommendation: Substantial Issue

IMPORTANT HEARING PROCEDURAL NOTE

Please note that the Commission will not take public testimony on this “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, and the Executive Director prior to determining whether to take such testimony regarding whether the appeal raises a substantial issue (14 CCR § 13115(c)). If the Commission receives public testimony on the substantial issue question, testimony is generally and at the discretion of the Chair limited to three minutes total per side. Only the Applicant,

persons who opposed the application before the local government, the local government, and their proxies/representatives are qualified to testify during the substantial issue phase of the appeal hearing. Other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony from all interested parties. If the Commission finds that the appeal does not raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

SUMMARY OF STAFF RECOMMENDATION

The City of Pacifica approved a coastal development permit (CDP) authorizing two 30-foot by 10-foot dedicated oversized vehicle parking spaces along Bradford Way, east of 2600 Francisco Boulevard, in the City of Pacifica in San Mateo County. The City-approved parking spaces are part of a City-approved “Temporary Safe Parking Program” (TSPP)¹ that would be operated in tandem with the Pacifica Resource Center, a local non-profit, and it would entail providing oversized vehicle (i.e., vehicles longer than 22 feet) parking permits for such parking spaces to help serve the local unhoused and/or housing insecure community. The City agreed to designate 13 such TSPP oversized vehicle-only parking spaces in the City, including five in the coastal zone, as part of a settlement of a lawsuit filed by the American Civil Liberties Union, the Legal Aid Society of San Mateo County, and disability rights advocates that challenged the City’s Oversized Vehicle Parking Ordinance (OVO) as unconstitutional. The City’s CDP at issue in this appeal authorizes the designation and development of two of the four oversized vehicle-only parking spaces and not the TSPP and/or the City’s OVO (staff has recommended previously to the City that before implementing the OVO in the coastal zone it must either amend its certified LCP or authorize the ordinance through a CDP). The Appellant contends that the City’s approval of the two oversized vehicle-only parking spots is inconsistent with public access policies of the Coastal Act and certified LCP because they would create a public safety hazard by impeding bicycle and pedestrian access along the California Coastal Trail, in addition to other coastal resource impact contentions.

The LCP and Coastal Act require that maximum public access opportunities be provided, including adequate parking facilities, and that lower cost visitor-serving and recreational facilities be protected, encouraged, and, where feasible, provided. Here, the City-approved project would allocate 80 feet of existing public parking space area

¹ The temporary, three-year TSPP was a required term of a settlement agreement between the City of Pacifica and the American Civil Liberties Union, the Legal Aid Society of San Mateo County, and disability rights advocates, resulting from a lawsuit filed against the City related to their Oversized Vehicle Parking Ordinance (OVO), which prohibits oversized vehicles from parking in certain street right-of-way locations (such as on streets less than 40 feet wide, near intersections, or encroaching on a bike lane) 24 hours a day and 365 days per year. The City had implemented their OVO in the coastal zone prior to the lawsuit being filed and has continued to enforce it in the coastal zone regardless of litigation. The OVO has not been recognized through either an LCP amendment or a CDP, and the Commission is tracking its prior implementation as a Coastal Act and LCP violation. Staff notes that it informed the City before it adopted its OVO that implementation in the coastal zone without the requisite LCP/CDP authorization would constitute a knowing and intentional Coastal Act/LCP violation.

along Bradford Way exclusively for two oversized vehicles (i.e., two tandem 30-foot long parking spaces with a 10-foot long no parking buffer zone at either end). The parking space area in question is near Highway 1 in an on-street parking area that is not in heavy demand for public parking for coastal access, and thus allocating them specifically for oversized vehicle use should not significantly affect public access opportunities at this location. In addition, users of the designated parking spaces would be required to agree not to impede pedestrian walkways and bike routes (which in this case are not designated and therefore pedestrians and bicyclists share lanes with cars). Other coastal resource impact contentions regarding habitat and species are not significant issues due to the City-approved program occurring in already developed areas, well away from such resources, as well as the good neighbor requirements that would assure such impacts are avoided, which are built into the program.

Nevertheless, the City's designation of two OVO parking spaces (and four total in the coastal zone under the City's TSPP), is integrally related to the City's uncertified program for regulating oversized vehicles, reflected in both the OVO and the related requirements of the City's TSPP, which outlines requirements for those who wish to use the designated OVO parking spaces. It appears that the entire purpose of the City's approval of OVO parking spaces is to resolve pending litigation challenging its ordinance. In addition, there are related and important questions as to potential impacts on public access to the coast by unsheltered individuals that use oversized vehicles as a place to sleep at night and/or as a place to park by day. The Commission's Environmental Justice Policy directs the Commission to consider coastal resource issues and impacts through an environmental justice lens when evaluating appeals of locally-approved CDPs. While the approved OVO parking spaces could potentially provide dedicated oversized vehicle parking spaces for unsheltered individuals, there are significant requirements for joining the TSPP which may impede some from being able to participate. In addition, Commission staff has informed the City previously that enforcement of the OVO in its current form in the coastal zone raises significant public access concerns because the ordinance prohibits oversized vehicles from parking in areas that could be used for coastal access. Thus, the City's uncertified OVO, which prohibits oversized vehicle parking in the coastal zone, cannot currently be implemented in the coastal zone without a CDP or LCP amendment, and therefore is being tracked as a violation by the Commission's enforcement division. Absent the City going forward with a CDP or LCPA for the OVO, oversized vehicle users who would have used these TSPP parking spaces will be able to park anywhere in the coastal zone, assuring impacts to potential TSPP participants of the Commission taking jurisdiction over the City-approved project will be negligible.

As such, the project raises broader and more significant questions concerning the City's regulation of oversized vehicles in the City's coastal zone, and the potential public access impacts of the program as it relates to the approved oversized vehicle parking spaces, that warrant a further evaluation by the Commission in a de novo appeal hearing. Therefore, after consideration of the five substantial issue factors in the Commission's regulations (14 CCR § 13115(c)), staff recommends that the Commission find substantial issue and accept the appeal for a full de novo review.

The single motion and resolution to find substantial issue is found on **Page 6** below.

TABLE OF CONTENTS

1. MOTION AND RESOLUTION..... 6

2. FINDINGS AND DECLARATIONS..... 6

 A. Project Background 6

 B. Project Description and Location 8

 C. City of Pacifica CDP Approval 8

 D. Appeal Procedures 8

 E. Summary of Appeal Contentions 10

 F. Standard of Review 10

 G. Substantial Issue Determination 10

3. APPENDICES 21

 A. Substantive File Documents 21

 B. Staff Contacts with Agencies and Groups 22

EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Site Photos

Exhibit 3 – City-Approved Project Plans

Exhibit 4 – City of Pacifica Final Local CDP Action Notice

Exhibit 5 – Appeal of City CDP Action

Exhibit 6 – Prior Commission Staff Comments on the City’s Oversized Vehicle Ordinance

Exhibit 7 – Participant Bill of Rights and Code of Conduct

1. MOTION AND RESOLUTION

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for 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 substantial issue finding and a future 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-2-PAC-22-0029 raises **no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a **no** vote.*

Resolution to Find Substantial Issue: *The Commission hereby finds that Appeal Number A-2-PAC-22-0029 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified City of Pacifica Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

2. FINDINGS AND DECLARATIONS

A. Project Background

The City-approved project is being implemented as a required term of a settlement agreement resulting from a class action lawsuit filed by the American Civil Liberties Union (ACLU), the Legal Aid Society of San Mateo County, and disability rights advocates against the City of Pacifica in 2021 (see *Geary, et al. v. City of Pacifica*, Case No. 3:21-cv-01780). This lawsuit alleged that the City's Oversized Vehicle Ordinance (OVO) (passed by the City Council on January 27, 2020 and thereafter implemented citywide) was unconstitutional on the grounds that the OVO violated the right to free movement, charged excessive fines and fees, unlawfully seized property (by towing), violated substantive due process, and violated disability laws. The OVO bars oversized vehicles (i.e., defined in the OVO as vehicles longer than 22 feet) from parking on certain street right-of-way areas (namely on all streets less than 40 feet wide, near an intersection, or areas that encroach on a bike lane) 24 hours a day and 365 days per year. The City had apparently implemented their OVO in the coastal zone prior to the lawsuit being filed and has continued to enforce the OVO regardless of the status of the lawsuit. The settlement agreement includes a requirement that the City develop and implement a "Temporary Safe Parking Program" (TSPP) that would be operated in tandem with the Pacifica Resource Center (PRC), a local non-profit organization, for three years. Per the settlement, the TSPP would include at least 13 oversized vehicle-only parking spaces in the City that could be used exclusively 24 hours a day by oversized vehicles permitted by the City/PRC. Additionally, the settlement agreement required the City to work with the PRC to provide a bimonthly mobile dumping station

and trash collection for permitted users of the designated parking spaces. As currently constituted, the City/PRC indicate that they intend the TSPP to be adaptive, whereby they will work to amend the TSPP over its three-year term as issues arise.

As part of the TSPP, the PRC would screen potential oversized vehicle parking permittees to ensure that: (1) they are experiencing homelessness or are housing insecure, as well as working with the PRC toward permanent housing; (2) they own, lease, or use their oversized vehicle with permission of the vehicle owner; (3) they have a valid driver's license, valid insurance, and current State vehicle registration; and (4) the designated vehicle has working basic safety and sanitation features (including fire extinguishers, smoke detectors, carbon monoxide alarms, toilets, and waste valves). The PRC would issue parking permits for oversized vehicle users/vehicles meeting such parameters at its discretion, with a single term for a permit lasting up to 29 days, which may be renewed over the course of the three-year program. The City/PRC indicates that user fees for parking permits would be on a sliding scale dependent on income, as follows: \$29 for families with income at 30% or below median income, \$290 for families with income between 30% and 50% of median income, and \$720 for families with income between 50% and 80% of median income. In addition, parking permit holders must sign and agree to be bound by a the Participant Bill of Rights and an Onsite Code of Conduct (see **Exhibit 7**), which together require them to adhere to certain operational standards and good neighbor considerations, including requiring proper disposal of wastewater, trash, and recyclables; proper storage of all personal property and pets within their vehicle; no cooking outside of the designated vehicle; no fires, storage of hazardous materials, illegal drug use or sales, public alcohol consumption, loitering, or trespass in or around their vehicle; and no obstruction of pedestrian and bicycle access. The prerequisites to even apply to park in these oversized vehicle-only parking spaces are quite rigorous, and therefore could create potential hurdles to participation in the TSPP. Although the subject CDP on appeal to the Commission does not authorize the TSPP in full and is more narrowly focused on approving two designated oversized vehicle parking spaces in the coastal zone, the City's permit conditions require compliance with all TSPP requirements for participants using the two designated parking spaces and, in that sense, authorizes the TSPP as to the designated OVO parking spaces.

The City has continued to enforce the OVO in the coastal zone despite the lawsuit, including towing oversized vehicles that park in the prohibited street areas described above, that park on City streets for longer than 72 hours, or that have more than five unpaid parking citations. To be clear, however, the OVO has not been recognized through either an LCP amendment nor a CDP. In fact, the Commission notes that the City was informed before it adopted its OVO that implementation in the coastal zone without the requisite LCP/CDP authorization would constitute a knowing and intentional Coastal Act/LCP violation.² Therefore, as the TSPP is intrinsically linked to the OVO, both programs need to be holistically evaluated in order to determine the full impacts on public access and environmental justice. Thus, notwithstanding the City's approval of a CDP to designate these oversized vehicle only parking spaces, the City may not

² See Commission staff comments to the City in **Exhibit 6**.

implement either the City's TSP or its OVO in the coastal zone. In addition, the City's failure to obtain CDP/LCP authorization of its OVO prior to its implementation back in 2020 is a Coastal Act/LCP violation, and the matter is being tracked by the Commission's enforcement division, including to consider options for future action to address the violation.

B. Project Description and Location

The City-approved project is located on Bradford Way, in the public right-of-way located east of 2600 Francisco Boulevard, between the Sharp Park Golf Course and Highway 1 in the City of Pacifica (see **Exhibit 1**). The project would allocate 80 feet of existing public parking space area along Bradford Way exclusively for two oversized vehicles (i.e., two tandem 30-foot long by 10-foot wide parking spaces with a 10-foot long no parking buffer zone at either end), where such parking spaces would be allotted for exclusive use by oversized vehicles 24 hours a day for a temporary period of three years, subject to the obtaining a parking permit from the City/PRC for their use. The project includes installation of two poles with 12 by 18-inch signs identifying the spaces (see **Exhibit 3**), placement of a 4-inch-wide white thermoplastic marking to delineate the three non-curb sides of the parking spaces, and associated red curbing for the 10-foot no parking buffers.

C. City of Pacifica CDP Approval

The City of Pacifica Planning Commission approved a CDP (City CDP No. CDP-439-22) for the above-referenced project on May 16, 2022.³ The City's notice of its CDP decision was received on Friday, June 10, 2022 (see **Exhibit 4**), and the Coastal Commission's ten-working day appeal period for this action began on Monday, June 13, 2022, and concluded at 5 pm on June 24, 2022. One valid appeal was received during the appeal period (see **Exhibit 5** for full appeal document).

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; (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.

³ The City also approved another similar project in the coastal zone on the same day, where that project allowed for two similar such oversized vehicles parking-only spaces to be identified north of 560 San Pedro Avenue and between San Pedro Avenue and Highway 1. That City CDP decision (City CDP-438-22) has also been appealed to the Commission, and it is also scheduled for Commission action at the Commission's August 2022 meeting.

This City CDP decision is appealable because it is between the sea and the first public road paralleling the sea.

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

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal and address at least the substantial issue question within 49 working days of the filing of the appeal unless the Applicant has waived that requirement, in which case there is no deadline for Commission action. In this case, the Applicant has not waived the 49 working day requirement, and thus the deadline is August 31, 2022.

The Coastal Act and the Commission's implementing regulations are structured such that a substantial issue is presumed when the Commission acts on this question unless the Commission finds that an appeal does *not* raise a substantial issue, and the Commission considers several factors in making that determination.⁴ At the substantial issue stage of the hearing, the Commission may only consider contentions raised by the appeal. At the substantial issue stage, 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 on the substantial issue question unless at least three Commissioners request it. Otherwise, a substantial issue is found and the Commission will proceed to the *de novo* stage of the hearing. If 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, Appellant(s), persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

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

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

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

E. Summary of Appeal Contentions

The Appellant's contentions focus on two main areas, public access and sensitive habitat, contending that the two oversized vehicle parking-only spaces at this location would create a public safety hazard by impeding bicycle and pedestrian access along the California Coastal Trail and endanger sensitive coastal areas inhabited by federally protected species. Specifically, the Appellant states that this location is an established bike route and the only corridor that connects walkers, hikers, runners, and cyclists all to the California Coastal Trail and that the roadway will not be wide enough for cyclists to safely pass the oversized vehicles. Further, the Appellant states that since there is no infrastructure or services to support handling of garbage and wastewater, and as oversized vehicles use gas or diesel-powered generators that could cause spills and/or fires, such vehicles could affect the wetland habitat in the Sharp Park Golf Course and thus impact California red-legged frogs and San Francisco garter snakes. The Appellant's full contentions can be found in **Exhibit 5**.

F. Standard of Review

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

G. Substantial Issue Determination

1. Public Access

Applicable LCP Provisions

The LCP contains a number of provisions related to public access, and they generally mirror Coastal Act requirements. Applicable LCP provisions include:

LUP Policy 1: *Maximum access 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 property-owners, and natural resource areas from overuse.*

LUP Policy 2: *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rock coastal beaches to the first line of terrestrial vegetation.*

LUP Policy 3: *Public Access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (a) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (b) Adequate access exists nearby; or (c) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

LUP Policy 4: *Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

LUP Policy 5: *Lower cost visitor and recreational facilities and housing opportunities for persons of low and moderate income shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. New housing in the Coastal Zone shall be developed in conformity with the standards, policies, and goals of the local conformity with the standards, policies, and the goals of the local housing elements adopted in accordance with the requirements of subdivision (c) of Section 650302 of the Government Code.*

LUP Policy 25: *The location and amount of new development should maintain and enhance public access to the coast by: (a) facilitating the provision or extension of transit service; (b) providing commercial facilities within or adjoining residential development, or in other areas that will minimize the use of coastal access roads; (c) providing non-automobile circulation within the development; (d) providing adequate parking facilities or providing substitute means or serving the development with public transportation, (e) assuring the potential for public transit for high intensity uses such as high-rise office buildings; and (f) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of on-site recreational facilities to service the new development.*

LUP Policy 26: *New development shall: (a) minimize risks to life and property in areas of high geologic, food, and fire hazard; (b) assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic*

instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs; (c) be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development; (d) minimize energy consumption and vehicle miles traveled; (e) where appropriate, protect special communities and neighborhoods which, because of their unique characteristics are popular visitor destination points for recreational uses.

Applicable Coastal Act Provisions

All of these above-cited LCP provisions derive from the authority of the Coastal Act, which itself provides:

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

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

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

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

Analysis

Taken together, the LCP and Coastal Act require that maximum public access opportunities be provided, including adequate parking facilities, and that lower cost visitor-serving and recreational facilities be protected, encouraged, and, where feasible, provided.

Here, the City-approved project would temporarily designate existing public parking space area on a paved street for exclusive use by two oversized vehicles participating in the City's Temporary Safe Parking Program (TSPP). The parking spaces in question are near Highway 1 in an area that is not in heavy demand for public parking for coastal access, and thus allocating them specifically for oversized vehicle use is not likely to significantly affect overall public access opportunities at this location.

In terms of other potential access impacts, Bradford Way does not include designated pedestrian or bicycle areas, and rather pedestrians and bicyclists currently 'share the

road' with vehicles. Although not ideal, the project will not change that status quo, including because users of the designated spaces would be required to keep all personal property within their vehicles and would be barred from blocking any pedestrian or bicycle access. Thus, the City-approved project should not significantly alter or affect existing access at this location, including California Coastal Trail (CCT) access.⁵

However, while the project, when viewed in isolation, may have minor impacts on public access to the coast (and could possibly provide some improved access for two oversized vehicles), the project is integrally related to the City's uncertified OVO and the related uncertified TSSP, which creates requirements for all individuals who wish to use the designated OVO parking spaces. The City's permit requires that all users of designated OVO parking spaces comply with the requirements of the TSSP, which as previously mentioned are rigorous. Specifically, the program qualifications are restrictive in some respects, and therefore could potentially be a hurdle for participation in the TSSP and access to the designated oversized vehicle parking spaces, especially for those oversized vehicle users of limited means where meeting all of the specified criteria may actually entail fairly significant costs. Therefore, with what little has been reviewed and analyzed of the OVO or related TSSP to date, it is difficult to assess the broader implications of the City's approval of this project for public access to the coast. Indeed, the overall access impacts of the OVO on the unsheltered community as a whole in Pacifica remains entirely unclear, though it is likely implementation of the OVO restricts coastal access for the unsheltered community and others who use oversized vehicles. Further, it appears that the City has continued enforcement of the OVO in the coastal zone despite lacking a CDP or LCP authorization for the significant restrictions on oversized vehicles in the ordinance. Additionally, the requirements to join the program could be restrictive, and it is unclear whether the 13 total parking spots provide adequate parking to balance the restrictions of the OVO for the unsheltered individuals in Pacifica. Therefore, there is potential for a substantial environmental justice issue which is further discussed below. Thus, the City needs to issue a CDP for the OVO as a whole before the TSSP spots are authorized in order to more thoroughly analyze these issues, all of which creates a substantial issue of LCP conformance regarding public access.

2. Environmental Justice

The project's potential impacts on public access to the coast raise related environmental justice concerns that the Commission may consider in evaluating whether to accept the appeal.

Applicable Coastal Act Provisions

The Coastal Act explicitly identifies the need to ensure equality and environmental justice and allows the Commission to consider coastal resource issues and impacts

⁵ In that regard Bradford Way provides a sort of secondary and inland CCT access inasmuch as the main CCT access is located on the western side of the Sharp Park Golf Course on the Sharp Park Berm.

through that lens in appeal cases, like this, even if the LCP does not explicitly address environmental justice, as is the case here. The Coastal Act states:

Section 30013. *The Legislature further finds and declares that in order to advance the principles of environmental justice and equality, subdivision (a) of Section 11135 of the Government Code and subdivision (e) of Section 65040.12 of the Government Code apply to the commission and all public agencies implementing the provisions of this division. As required by Section 11135 of the Government Code, no person in the State of California, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, shall be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination, under any program or activity that is conducted, operated, or administered pursuant to this division, is funded directly by the state for purposes of this division, or receives any financial assistance from the state pursuant to this division.*

Section 30107.3. *(a) “Environmental justice” means the fair treatment and meaningful involvement of people of all races, cultures, and incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. (b) “Environmental justice” includes, but is not limited to, all of the following:*

- (1) The availability of a healthy environment for all people.*
- (2) The deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities.*
- (3) Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision making process.*
- (4) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.*

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

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

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

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

Analysis

The first step in this environmental justice analysis is to determine whether unsheltered individuals that use an oversized vehicle as a place to sleep at night, as well as a means of transportation more broadly requiring a parking space, constitute an “environmental justice” community to which the Coastal Act’s environmental justice provisions and the Commission’s EJ Policy apply. If so, the next step is to identify to what extent the City-approved project may adversely and disproportionately affect those individuals. In answering these questions, the Commission’s consideration necessarily focuses on how the project’s coastal resource impacts may disproportionately affect such individuals compared to others affected by the project.⁶ The Commission is also tasked with ensuring that communities of concern can access the process to make their views known and to help shape the debate on potential Commission decisions.

Based on the evaluation criteria set forth above and consistent with prior Commission actions, the Commission finds that unsheltered individuals⁷ that use an oversized vehicle as a place to sleep at night and/or as a means of transportation more broadly requiring a parking space are in fact an environmental justice community. The Coastal Act’s definition of environmental justice as set forth in Section 30107.3 above commits the Commission to the fair treatment and meaningful involvement of people of all “races, cultures, and incomes ... with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” Unsheltered individuals that use an oversized vehicle as a place to sleep at night and/or as transportation more broadly can generally be classified as a lower income segment of

⁶ This focus derives from the fact that the Coastal Commission is a coastal management agency charged with the protection and enhancement of the State’s coastal resources. Thus, the Commission’s review of environmental justice issues is necessarily rooted in its evaluation of coastal resource benefits and burdens, as opposed to non-coastal resource issues, such as broader societal issues associated with public health and general welfare, which are the purview of other government agencies and entities.

⁷ According to the U.S. Department of Housing and Urban Development, people experiencing homelessness may have access to shelter or may be considered “unsheltered” if their primary nighttime residence is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground. The analysis in this report focuses on unsheltered individuals who sleep in oversized vehicles at night and/or who use oversized vehicles as transportation and need a place to park during the day.

the population that are acutely struggling to attain some of society’s most basic needs, such as safe housing, making them particularly vulnerable to outside environmental hazards. Although disaggregated data for unsheltered individuals living in an oversized vehicle does not appear to exist, people of color tend to make up a much higher percentage of the overall unsheltered population, particularly African Americans (who statewide make up nearly 40 percent of the unsheltered population but represent only 6.5 percent of the general population).⁸ In the City of Pacifica, 161 people were identified as unsheltered as part of the 2022 one-day homeless count conducted every year in order to meet federal requirements and gather information to help illustrate the scope of the issue.⁹

Finally, Commission staff has consulted a number of environmental justice experts in California who uniformly advised that, based on the characteristics of this vulnerable population, the unsheltered individuals that use an oversized vehicle as a place to sleep at night and/or use them as transportation and need to park by day definitely qualify as an environmental justice community. Thus, the Commission here finds that such unsheltered individuals qualify as an environmental justice community to which the Coastal Act’s environmental justice provisions and the Commission’s EJ Policy apply.

To date, a key area of controversy associated with the City-approved project has been the impacts that implementation of the City’s OVO and its parking restrictions will have on unsheltered individuals who use oversized vehicles as a place to sleep overnight and/or to park during the day.¹⁰ The City’s action on the two oversized vehicle parking spots here (or four total considering the similar, second appeal on the Commission’s August agenda as well), would provide for oversized vehicle-only parking in designated areas, which would be subject to a variety of prerequisites and requirements. In total, the City’s TSPP would provide 13 oversized vehicle-only parking spaces throughout the City, with 5¹¹ in the coastal zone, which would provide some parking to the unsheltered community using oversized vehicles. That said, the prerequisites to even apply to park in these oversized vehicle-only parking spaces are quite thorough and restrictive in some respects, and therefore could potentially be a hurdle for participation in the TSPP and access to the designated oversized vehicle parking spaces, especially for those oversized vehicle users of limited means where meeting all of the specified criteria may actually entail fairly significant costs. Based on the way in which the TSPP interacts with the OVO, and its 24 hour a day and 365 day a year oversized vehicle parking prohibitions and restrictions on oversized vehicle parking, the overall impact of the OVO on the unsheltered community is unclear, as is the way in which the TSPP parking spots

⁸ As detailed by the U.S. Department of Housing and Urban Development in its 2019 Annual Homeless Assessment Report to Congress.

⁹ Known as a “point-in-time” count.

¹⁰ While this may not be the specific concern raised by the appellants in this appeal, the broader controversy surrounding public access impacts of restricting oversized vehicles generally, how the City does so, and what restrictions are imposed on users of designated OVO parking spaces, is all integrally related to an evaluation of the public access impacts of designating OVO parking spaces.

¹¹ The 5th parking spot in the coastal zone is going through the local process as CDP-437-22 and is not in the Coastal Commission appeals jurisdiction.

will balance the restrictions that the OVO will have on the unsheltered community. As mentioned above, the City has not obtained a CDP (or LCP amendment) authorizing either the City's OVO or the related TSPP in whole.¹² Thus, the impact of the entire program on unsheltered populations in the coastal zone may be greater and requires a full analysis of the OVO program to understand the full impact of the ordinance on coastal access, including importantly for the directly affected unsheltered population. In other words, evaluating the extent to which the project interferes with public access to the coast, as the appeal contends, requires a broader understanding of the entire way in which the City is regulating and restricting oversized vehicles in the first place. Finally, the City's uncertified OVO, which prohibits oversized vehicle parking in the coastal zone, cannot currently be implemented in the coastal zone without a CDP or LCP amendment, and therefore is being tracked as a violation by the Commission's enforcement division. Absent the City going forward with a CDP or LCPA for the OVO, oversized vehicle users who would have used these TSPP parking spaces will be able to park anywhere in the coastal zone, assuring impacts to potential TSPP participants of the Commission taking jurisdiction over the City-approved project will be negligible.

In conclusion, the appeal raises a substantial issue as to the City-approved project's consistency with public access and environmental justice policies of the Coastal Act and the public access policies in the certified LCP.

3. Habitat

Applicable LCP Provisions

The LCP contains a number of provisions related to habitat protection. Applicable LCP provisions include:

LUP Policy 12: *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of wastewater discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

LUP Policy 18: *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

¹² As discussed more fully below, the City's failure to obtain CDP/LCP authorization for the OVO prior to its implementation in 2020 is a Coastal Act violation.

LUP Policy 23: *New development, except as otherwise provided in this policy, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels. Where feasible, new hazardous industrial development shall be located away from existing developed areas. Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.*

Analysis

The LCP requires protection of wetlands, ESHA, and sensitive habitat. Here, despite the Appellant's contentions, there is no evidence in the record to suggest that the parking spaces in question are anywhere near a wetland, ESHA, or areas occupied by sensitive species. As to allegations that users would improperly dispose of wastes, and such disposal would lead to impacts on such areas/species as wastes migrated, several things are noted.

First, the City-approved project requires that Pacifica Resource Center inspect oversized vehicles in the program to ensure that they include working toilet and waste disposal facilities. Second, users of the parking spaces are required to abide by requirements to properly dispose of gray water, black water, and trash and recyclables. Third, the parking spaces would be accompanied by a recreational vehicle dump station¹³ (located at 2212 Beach Boulevard)¹⁴ and a mobile dump station service that would be available to all parking permittees. Fourth, Pacifica Resource Center staff would monitor parking spaces to ensure that the areas are maintained in a clean manner, including in terms of garbage and debris. Fifth, conditions of the City CDP require participants to comply with all Bay Area Air Quality Management District regulations applicable to any generator use. And sixth, the Pacifica Resource Center can provide written warnings to participants for failing to comply with applicable rules, where their parking permit and participation can be revoked if needed. These types of avoidance and mitigation measures are designed to prevent the dumping of black or

¹³ A drive-up facility for oversized vehicles that includes a connection point to the sanitary sewer that allows oversized vehicles with wastewater and grey water collections systems to 'dump' their accumulated tanks.

¹⁴ The Commission is not aware of any such dump station currently at this location. It is in the coastal zone (at the City's facility at that address, including corporation yard facilities), and its development and use would require its own CDP.

grey water, and to control debris, and should be sufficient to avoid any significant impacts to any nearby habitat areas, including in Sharp Park.¹⁵

In conclusion, the Appellant's habitat contentions do not raise a substantial Coastal Act or LCP issue.

4. Violation

This appeal raises Coastal Act and LCP enforcement issues because the City adopted and implemented its OVO (including both the oversized vehicle parking restrictions, as well as the more physical development that accompanied them-e.g., installation of parking restriction signs) in 2020 without an LCPA and without a CDP, and has continued to enforce the OVO, despite this procedural issue. This occurred despite the City being informed by Commission staff prior to OVO implementation that a CDP/LCP authorization was required before implementing the program in the coastal zone.

Although development has taken place prior to this City CDP action that has been appealed to the Commission, consideration of this appeal by the Commission has been based solely upon the City's LCP and the Coastal Act's public access provisions, all as informed by the Coastal Act's environmental justice provisions and the Commission's EJ Policy. The City's approval of the subject CDP (CDP-439-22) and the Commission's finding of substantial issue on the appeal (Appeal No. A-2-PAC-22-0029) in no way resolves this Coastal Act/LCP violation, nor does the Commission taking action on substantial issue condone or authorize prior or future implementation of the unpermitted OVO. In addition, the Commission's action on this appeal does not constitute an implied statement of the Commission's position regarding the legality of City implementation of the unpermitted OVO without a CDP (and without an LCP amendment). This matter has been referred to the Commission's enforcement division to consider options for future action to address the violation. The Commission's enforcement division is continuing to investigate and monitor this outstanding Coastal Act/LCP violation, which will need to be addressed by the City in a future action. And to be clear, since the City is currently implementing its OVO in the coastal zone without authorization then that is again a knowing and intentional violation of Coastal Act and LCP permitting requirements, which by definition include additional penalty provisions.

Finally, Commission review and action on this appeal does not constitute a waiver of any legal action with regard to the identified violations (or any other violations not yet identified), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken without a CDP, or of any other development, except as otherwise expressed herein.

5. Conclusion

¹⁵ As the Commission is aware from past actions, the Sharp Park Golf Course area includes habitat for the California red-legged frog and the San Francisco garter snake. However, these parking spaces are located some 300 feet away from the closest nearby stream, 500 feet from Laguna Salada, and 600 feet from the pond on the southwest side of the golf course where habitat is present.

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP and/or Coastal Act public access conformity such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP conformance. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue: the degree of factual and legal support for the City's decision; the extent and scope of the development as approved or denied by the City; the significance of the coastal resources affected by the decision; the precedential value of the City decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well. In this case, the five factors, considered together, support a conclusion that the City's approval of a CDP for the proposed project raises a substantial issue of LCP and Coastal Act conformance.

First, in terms of the degree of factual and legal support for the City's decision, while there is factual and legal support for the City's decision to approve the project as consistent with the LCP's wetland and ESHA policies, significant questions exist concerning the factual and legal support for the City's determination that the project is consistent with public access policies of the Coastal Act and certified LCP. As described in the findings above, evaluating the extent to which the project interferes with public access to the coast, as the appeal contends, requires a broader understanding of the way in which the City is regulating and restricting oversized vehicles in the first place via the OVO. Here, however, it is unclear how the OVO, which has not gone through the local CDP process, would impact users of oversized vehicles, including unsheltered individuals who are considered an environmental justice community. It is also unclear whether the City's TSPP, which is also uncertified, provides appropriate restrictions on users of designated oversized vehicle parking spaces. Thus, there are factual and legal gaps in the City's analysis and decision. Therefore, the first factor weighs in favor of a finding of substantial issue.

Second, with respect to the extent and scope of the City-approved development, the development is limited to two 30-foot by 10-foot designated parking spaces with a 10-foot no parking buffer at each end, in total encompassing an 800 square-foot area on an already paved street where vehicle parking is currently occurring. However, the City approved a separate CDP for two additional oversized vehicle parking spaces elsewhere in the coastal zone with similar conditions and requirements to comply with the uncertified TSPP (a project that is also on appeal and on the Commission's August agenda). As mentioned previously, however, the CDP appealed to the Commission is integrally related to the City's OVO and the related TSPP, both of which are uncertified, and which together could have much greater impacts on public access to the coast that are important to weigh in the balance. Thus, the extent and scope of this project is not insignificant and is greater than these two parking spaces alone. The second factor also weighs in favor of finding substantial issue.

Third, with respect to the significance of affected coastal resources, the proposed project is located on a paved street which already allows for vehicle parking, and the nearest coastal access points and habitat areas are sufficiently far enough away that the City-approved project is unlikely to affect those resources. However, as described in the findings above, the appealed project raises important public access concerns that are amplified when viewed through an environmental justice lens, as the City-approved oversized vehicle parking spaces are integrally related to the City's uncertified OVO, which severely limits parking of oversized vehicles in the coastal zone. The third factor also weighs in favor of finding substantial issue.

Fourth, with respect to the potential to set an adverse precedent for future interpretations of the LCP, the proposed project has the potential to set an adverse precedent because the City-approved permit requires users of the designated oversized vehicle parking spaces to comply with the uncertified TSSP, which could be used as precedent for future projects and interpretations of the LCP by the City and other parties. Therefore, the fourth factor weighs in favor of finding substantial issue.

Finally, as to the fifth factor, the City-approved project does raise issues of regional and statewide significance. The scope of the project may be limited to two dedicated parking spots in this particular location (with a total of four parking spots in the coastal zone when considering the related local CDP). But the City's designation of only four parking spaces for oversized vehicles in the City's coastal zone, and prohibition of these vehicles in many other areas that may be used for coastal access, could establish a precedent for other local governments considering similar ordinances restricting oversized vehicles. As described above, restrictions like those contained in the City's OVO raise environmental justice concerns that are a matter of significant statewide importance and importance to the Commission, as reflected in the Commission's Environmental Justice Policy. Thus, the fifth factor also supports a finding of substantial issue.

In this case, these five factors, considered together, support a conclusion that the appeal of the City's approval of a CDP for this project does raise a substantial issue of conformance with public access policies of the Coastal Act and certified LCP. Thus, and for all the reasons stated herein, the Commission finds that Appeal Number A-2-PAC-22-0029 raises a substantial issue of conformance with the certified City of Pacifica LCP and the public access policies of the Coastal Act.

3. APPENDICES

A. Substantive File Documents¹⁶

- City of Pacifica Final Local CDP Action Notice
- Appeal of City CDP Action

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

B. Staff Contacts with Agencies and Groups

- City of Pacifica Planning Department

Attachment B

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
 455 MARKET STREET, SUITE 228
 SAN FRANCISCO, CA 94105
 PHONE: (415) 904-5260
 FAX: (415) 904-5400
 WEB: WWW.COASTAL.CA.GOV



F7b

Appeal Filed:	6/24/2022
Action Deadline:	9/2/2022
Staff:	OR - SF
Staff Report:	7/29/2022
Hearing Date:	8/12/2022

STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number: A-2-PAC-22-0031

Applicant: City of Pacifica Public Works Department

Appellant: Dina Micheletti

Local Government: City of Pacifica

Local Decision: City of Pacifica Coastal Development Permit Application Number CDP-438-22, approved by the City Planning Commission on May 16, 2022

Project Location: Between San Pedro Avenue and Highway 1, approximately 100 feet north of Ace Hardware) in the City of Pacifica, San Mateo County

Project Description: Establish two on-street oversized vehicle-only parking spaces, including minor right-of-way improvements (such as signs, poles, and pavement markings) in an informal parking area along San Pedro Way for a period of three years

Staff Recommendation: Substantial Issue

IMPORTANT HEARING PROCEDURAL NOTE

Please note that the Commission will not take public testimony on this “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, and the Executive Director prior to determining whether to take such testimony regarding whether the appeal raises a substantial issue (14 CCR § 13115(c)). If the Commission receives public testimony on the substantial issue question, testimony is generally and at the discretion of the Chair limited to three minutes total per side. Only the Applicant,

persons who opposed the application before the local government, the local government, and their proxies/representatives are qualified to testify during the substantial issue phase of the appeal hearing. Other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony from all interested parties. If the Commission finds that the appeal does not raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

SUMMARY OF STAFF RECOMMENDATION

The City of Pacifica approved a coastal development permit (CDP) authorizing two 30 by 10-foot dedicated oversized vehicle parking spots, located approximately 100 feet north of 560 San Pedro in the City of Pacifica in San Mateo County. The City-approved parking spaces are part of a City- approved “Temporary Safe Parking Program” (TSPP)¹ that would be operated in tandem with the Pacifica Resource Center, a local non-profit, and it would entail providing oversized vehicle (i.e., vehicles longer than 22 feet) parking permits for such parking spaces to help serve the local unhoused and/or housing insecure community. The City agreed to designate 13 such TSPP parking spaces in the City, including five in the coastal zone, as part of a settlement of a lawsuit filed by the American Civil Liberties Union, the Legal Aid Society of San Mateo County, and disability rights advocates that challenged the City’s Oversized Vehicle Parking Ordinance (OVO) as unconstitutional. The City’s CDP at issue in this appeal authorizes the designation and development of two of the four oversized vehicle-only parking spaces and not the TSPP and/or the City’s OVO (staff has recommended previously to the City that before implementing the OVO in the Coastal Zone it must either amend its certified LCP or authorize the ordinance through a CDP). The Appellant contends that the two OSV parking spots in question would interfere with the public’s right to access the coast and violate and/or are inconsistent with numerous Coastal Act policies intended to protect public access and habitat.

The LCP and Coastal Act require that maximum public access opportunities be provided, including adequate parking facilities, and that lower cost visitor-serving and recreational facilities be protected, encouraged, and, where feasible, provided. Here, the City-approved project would allocate existing public parking spaces in a partially paved and unstriped parking area that has been used informally for public parking for Pacifica State Beach and nearby hiking trails. The parking site is located about a quarter-mile from the shoreline, and the intervening area includes both on-street and

¹ The temporary, three-year TSPP was a required term of a settlement agreement between the City of Pacifica and the American Civil Liberties Union, the Legal Aid Society of San Mateo County, and disability rights advocates, resulting from a lawsuit filed against the City related to their Oversized Vehicle Parking Ordinance (OVO), which prohibits oversized vehicles from parking in certain street right-of-way locations (such as on streets less than 40 feet wide, near intersections, or encroaching on a bike lane) 24 hours a day and 365 days per year. The City had implemented their OVO in the Coastal Zone prior to the lawsuit being filed and has continued to enforce it in the Coastal Zone regardless of litigation. The OVO has not been recognized through either an LCP amendment or a CDP, and the Commission is tracking its prior implementation as a Coastal Act and LCP violation. Staff notes that it informed the City before it adopted its OVO that implementation in the Coastal Zone without the requisite LCP/CDP authorization would constitute a knowing and intentional Coastal Act/LCP violation.

parking lot parking spaces available to the public. Allocating space within this area for two oversized vehicle spaces should not significantly affect overall public access opportunities. Other coastal resource impact contentions regarding habitat and species are not significant issues due to the City-approved program occurring in already developed areas, well away from such resources, as well as the good neighbor requirements that would assure such impacts are avoided, which are built into the program.

Nevertheless, the City's designation of two OVO parking spaces (and four total in the Coastal Zone under the City's TSPP), is integrally related to the City's uncertified program for regulating oversized vehicles, reflected in both the OVO and the related requirements of the City's TSPP, which outlines requirements for those who wish to use the designated OVO parking spaces. It appears that the entire purpose of the City's approval of OVO parking spaces is to resolve pending litigation challenging its ordinance. In addition, there are related and important questions as to potential impacts on public access to the coast by unsheltered individuals that use oversized vehicles as a place to sleep at night and/or as a place to park by day. The Commission's Environmental Justice Policy supports the Commission considering coastal resource issues and impacts through an environmental justice lens when evaluating appeals of locally-approved CDPs. While the approved OVO parking spaces could potentially provide dedicated oversized vehicle parking spaces for unsheltered individuals, there are significant requirements for joining the TSPP which may impede some from being able to participate. In addition, Commission staff has informed the City previously that enforcement of the OVO in its current form in the Coastal Zone raises significant public access concerns because the ordinance prohibits oversized vehicles from parking in areas that could be used for coastal access. Thus, the City's uncertified OVO, which prohibits oversized vehicle parking in the coastal zone, cannot currently be implemented in the coastal zone without a CDP or LCP amendment, and therefore is being tracked as a violation by the Commission's enforcement division. Absent the City going forward with a CDP or LCPA for the OVO, oversized vehicle users who would have used these TSPP parking spaces will be able to park anywhere in the coastal zone, assuring impacts to potential TSPP participants of the Commission taking jurisdiction over the City-approved project will be negligible.

As such, the project raises broader and more significant questions concerning the City's regulation of oversized vehicles in the City's coastal zone, and the potential public access impacts of the program as it relates to the approved oversized vehicle parking spaces, that warrant a further evaluation by the Commission in a de novo appeal hearing. Therefore, after consideration of the five substantial issue factors in the Commission's regulations (14 CCR § 13115(c)), staff recommends that the Commission find substantial issue and accept the appeal for a full de novo review. Therefore, after consideration of the five substantial issue factors in the Commission's regulations (14 CCR § 13115(c)), staff recommends that the Commission find substantial issue and accept the appeal for a full de novo review.

The single motion and resolution to find substantial issue is found on **Page 5** below.

TABLE OF CONTENTS

1. MOTION AND RESOLUTION.....Error! Bookmark not defined.

2. FINDINGS AND DECLARATIONS..... 5

 A. Project Description and Location..... 5

 B. City of Pacifica CDP Approval 5

 C. Appeal Procedures 7

 D. Summary of Appeal Contentions 9

 E. Standard of Review 9

 F. Substantial Issue Determination 9

3. APPENDICES..... 22

 A. Substantive File Documents..... 22

 B. Staff Contacts with Agencies and Groups 22

EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Site Photos

Exhibit 3 – City-Approved Project Plans

Exhibit 4 – City of Pacifica Final Local CDP Action Notice

Exhibit 5 – Appeal of City CDP Action

Exhibit 6 – Prior Commission Staff Comments on the City’s Oversized Vehicle Ordinance

Exhibit 7 – Participant Bill of Rights and Code of Conduct

1. MOTION AND RESOLUTION

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for 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 substantial issue finding and a future 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-2-PAC-22-0031 raises **no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a **no** vote.*

Resolution to Find Substantial Issue: *The Commission hereby finds that Appeal Number A-2-PAC-22-0031 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified City of Pacifica Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

2. FINDINGS AND DECLARATIONS

A. Project Background

The City-approved project is being implemented as a required term of a settlement agreement resulting from a class action lawsuit filed by the American Civil Liberties Union (ACLU), the Legal Aid Society of San Mateo County, and disability rights advocates against the City of Pacifica in 2021 (see *Geary, et al. v. City of Pacifica*, Case No. 3:21-cv-01780). This lawsuit alleged that the City's Oversized Vehicle Ordinance (OVO) (passed by the City Council on January 27, 2020 and thereafter implemented citywide) was unconstitutional on the grounds that the OVO violated the right to free movement, charged excessive fines and fees, unlawfully seized property (by towing), violated substantive due process, and violated disability laws. The OVO bars oversized vehicles (i.e., defined in the OVO as vehicles longer than 22 feet) from parking on certain street right-of-way areas (namely on all streets less than 40 feet wide, near an intersection, or areas that encroach on a bike lane) 24 hours a day and 365 days per year. The City had apparently implemented their OVO in the Coastal Zone prior to the lawsuit being filed and has continued to enforce the OVO regardless of the status of the lawsuit. The settlement agreement includes a requirement that the City develop and implement a "Temporary Safe Parking Program" (TSPP) that would be operated in tandem with the Pacifica Resource Center (PRC), a local non-profit organization, for three years. Per the settlement, the TSPP would include at least 13 oversized vehicle-only parking spaces in the City that could be used exclusively 24 hours a day by oversized vehicles permitted by the City/PRC. Additionally, the settlement agreement required the City to work with the PRC to provide a bimonthly mobile dumping station

and trash collection for permitted users of the designated parking spaces. As currently constituted, the City/PRC indicate that they intend the TSPP to be adaptive, whereby they will work to amend the TSPP over its three-year term as issues arise.

As part of the TSPP, the PRC would screen potential oversized vehicle parking permittees to ensure that: (1) they are experiencing homelessness or are housing insecure, as well as working with the PRC toward permanent housing; (2) they own, lease, or use their oversized vehicle with permission of the vehicle owner; (3) they have a valid driver's license, valid insurance, and current State vehicle registration; and (4) the designated vehicle has working basic safety and sanitation features (including fire extinguishers, smoke detectors, carbon monoxide alarms, toilets, and waste valves). The PRC would issue parking permits for oversized vehicle users/vehicles meeting such parameters at its discretion, with a single term for a permit lasting up to 29 days, which may be renewed over the course of the three-year program. The City/PRC indicates that user fees for parking permits would be on a sliding scale dependent on income, as follows: \$29 for families with income at 30% or below median income, \$290 for families with income between 30% and 50% of median income, and \$720 for families with income between 50% and 80% of median income. In addition, parking permit holders must sign and agree to be bound by a the Participant Bill of Rights and an Onsite Code of Conduct (see **Exhibit 7**), which together require them to adhere to certain operational standards and good neighbor considerations, including requiring proper disposal of wastewater, trash, and recyclables; proper storage of all personal property and pets within their vehicle; no cooking outside of the designated vehicle; no fires, storage of hazardous materials, illegal drug use or sales, public alcohol consumption, loitering, or trespass in or around their vehicle; and no obstruction of pedestrian and bicycle access. The prerequisites to even apply to park in these oversized vehicle-only parking spaces are quite rigorous, and therefore could create potential hurdles to participation in the TSPP. Although the subject CDP on appeal to the Commission does not authorize the TSPP in full and is more narrowly focused on approving two designated oversized vehicle parking spaces in the coastal zone, the City's permit conditions require compliance with all TSPP requirements for participants using the two designated parking spaces and, in that sense, authorizes the TSPP as to the designated OVO parking spaces.

The City has continued to enforce the OVO in the Coastal Zone despite the lawsuit, including towing oversized vehicles that park in the prohibited street areas described above, that park on City streets for longer than 72 hours, or that have more than five unpaid parking citations. To be clear, however, the OVO has not been recognized through either an LCP amendment nor a CDP. In fact, the Commission notes that the City was informed before it adopted its OVO that implementation in the Coastal Zone without the requisite LCP/CDP authorization would constitute a knowing and intentional Coastal Act/LCP violation.² Therefore, as the TSPP is intrinsically linked to the OVO, both programs need to be holistically evaluated in order to determine the full impacts on public access and environmental justice. Thus, notwithstanding the City's approval of a CDP to designate these oversized vehicle only parking spaces, the City may not implement either the City's TSPP or its OVO in the coastal zone. In addition, the City's

² See Commission staff comments to the City in **Exhibit 6**.

failure to obtain CDP/LCP authorization of its OVO prior to its implementation back in 2020 is a Coastal Act/LCP violation, and the matter is being tracked by the Commission's enforcement division, including to consider options for future action to address the violation.

B. Project Description and Location

The proposed project is located within the public right-of-way along San Pedro Avenue, approximately 100 feet north of the Ace Hardware store at 560 San Pedro Avenue and immediately adjacent to Highway 1. Although a quarter-mile from the shoreline, this partially paved right-of-way currently serves as an informal parking area that is used by the general public, including for beach and hiking trail access in the City of Pacifica (**see Exhibit 1**). The project would stripe two 30-foot by 10-foot parking spaces within the public right-of-way, where such parking spaces would be allotted for exclusive use by oversized vehicles 24 hours a day for a temporary period of three years, subject to Program parameters. The project includes installation of two poles with 12 by 18-inch signs identifying the spaces (**see Exhibit 3**).

C. City of Pacifica CDP Approval

The City of Pacifica Planning Commission approved the above-referenced project on May 16, 2022.³ The City's notice of its CDP decision on 438-22 was received on Friday, June 10, 2022 (**see Exhibit 4**), and the Coastal Commission's ten-working day appeal period for this action began on Monday, June 13, 2022, and concluded at 5 pm on June 24, 2022. One valid appeal was received during the appeal period for this project. Please see **Exhibit 5** for full appeal document.

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; (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This City CDP decision is appealable because it is between the sea and the first public road paralleling the sea.

³ The City also approved another similar project in the Coastal Zone on the same day, where that project allowed for two similar such oversized vehicles parking spaces to be identified on Bradford Way between the Sharp Park Golf Course and Highway 1. That City CDP decision (City CDP-439-22) has also been appealed to the Commission, and it is also scheduled for Commission action at the Commission's August 2022 meeting.

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

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal and address at least the substantial issue question within 49 working days of the filing of the appeal unless the Applicant has waived that requirement, in which case there is no deadline for Commission action. In this case, the Applicant has not waived the 49 working day requirement, and thus the deadline is September 2, 2022.

The Coastal Act and the Commission's implementing regulations are structured such that a substantial issue is presumed when the Commission acts on this question unless the Commission finds that an appeal does *not* raise a substantial issue, and the Commission considers several factors in making that determination.⁴ At the substantial issue stage of the hearing, the Commission may only consider contentions raised by the appeal. At the substantial issue stage, 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 on the substantial issue question unless at least three Commissioners request it. Otherwise, a substantial issue is found and the Commission will proceed to the *de novo* stage of the hearing. If 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, Appellant(s), persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

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

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

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

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

E. Summary of Appeal Contentions

The Appellant contends that the two oversized vehicle parking spots at this location would interfere with the public's right to access the coast and violates and/or is inconsistent with numerous Coastal Act Policies intended to protect public access and habitat (the Appellant cites to Coastal Act Sections 30210, 30211, 30212.5, 30213, 30214, 30220, 30222, 30223, and 30231,⁵ and to LCP Policies 1-5, 8-9, 12, 18, 23, 25, 26). Specifically, the Appellant contends that parking in the project location would be drastically reduced, that the City did not determine how many public parking spots would be lost, that the proposed project is inconsistent with the established zoning designations, and that the City did not analyze the potential environmental impacts of this project as part of its approval which raises concerns regarding nearby wetlands and California red-legged frogs (CRLF). The Appellant's full appeal document can be found in **Exhibit 5**.

F. Standard of Review

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

G. Substantial Issue Determination

1. Public Access

Applicable LCP Policies

The LCP contains a number of provisions related to public access, and they generally mirror Coastal Act requirements. Applicable LCP provisions include:

LUP Policy 1: Maximum access shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety

⁵ Section 30231 is not a Coastal Act access provision and cannot form the basis for a valid appeal contention, and thus is not analyzed herein.

needs and the need to protect public rights, rights of property-owners, and natural resource areas from overuse.

LUP Policy 2: *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rock coastal beaches to the first line of terrestrial vegetation.*

LUP Policy 3: *Public Access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (a) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (b) Adequate access exists nearby; or (c) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

LUP Policy 4: *Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

LUP Policy 5: *Lower cost visitor and recreational facilities and housing opportunities for persons of low and moderate income shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. New housing in the Coastal Zone shall be developed in conformity with the standards, policies, and goals of the local conformity with the standards, policies, and the goals of the local housing elements adopted in accordance with the requirements of subdivision (c) of Section 650302 of the Government Code.*

LUP Policy 8: *The use of private lands suitable for visitor serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

LUP Policy 9: *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

LUP Policy 25: *The location and amount of new development should maintain and enhance public access to the coast by: (a) facilitating the provision or extension of transit service; (b) providing commercial facilities within or adjoining residential development, or in other areas that will minimize the use of coastal access roads; (c) providing non-automobile circulation within the development; (d) providing adequate parking facilities or providing substitute means or serving the development with public transportation, (e) assuring the potential for public transit for high intensity uses such as high-rise office buildings; and (f) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park*

acquisition and development plans with the provision of on-site recreational facilities to service the new development.

LUP Policy 26: *New development shall: (a) minimize risks to life and property in areas of high geologic, flood, and fire hazard; (b) assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs; (c) be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development; (d) minimize energy consumption and vehicle miles traveled; (e) where appropriate, protect special communities and neighborhoods which, because of their unique characteristics are popular visitor destination points for recreational uses.*

Applicable Coastal Act Provisions

All of these above-cited LCP provisions derive from the authority of the Coastal Act, which itself provides:

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

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

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

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

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

Section 30222 Private lands; priority of development purposes. *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

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

Analysis

Taken together, the LCP and Coastal Act require that maximum public access opportunities be provided, including adequate parking facilities, and that lower cost visitor-serving and recreational facilities be protected, encouraged, and, where feasible, provided.

The Appellant contends the City-approved project interferes with the public's right to access the coast, would reduce parking in the area, and that the City did not determine how many public parking spots would be lost. The Pedro Point neighborhood is a popular destination for locals and visitors, primarily for shopping at these more inland locations (with a variety of shops and restaurants), but also as a jumping off point for access to Pacifica State Beach as well as inland hiking trails. In addition to on-street parking, many beachgoers also park in portions of the Pedro Point Shopping Center just seaward of the site. The parking site itself is tucked away nearer to Highway 1 in an area a quarter-mile from the shoreline and the intervening area provides for accessible public beach parking. This location is a partially paved, unstriped area that is available for general public parking use. The proposed project would designate two 30-foot by 10-foot oversized vehicle parking spots, or about 600 square feet in an approximately 6,000 square foot area. While these spots are larger than typical parking spots due to the typical size of an oversized vehicle, and although it is unclear how many informal spots would be lost as a result of the parking spots given that the parking lot is not currently striped, Condition 5 of the City's CDP states that prior to use of the two oversized spaces the City will delineate such spaces, as well as delineate other parking spaces in the parking area to help make clear where parking is allowed. Thus, allocating the spots specifically for oversized vehicle use is not likely to significantly affect overall public access opportunities at this location.

As to Appellant contentions that the project is required to provide access (LCP Policy 3), that parking areas and facilities be distributed (LCP Policy 4), that lower cost facilities be provided (LCP Policy 5), that upland areas be reserved for recreational uses (LCP Policy 9), that public access be enhanced (LCP Policy 25), and that risks be minimized, stability and structural integrity ensured, air quality rules be adhered to, energy consumption and vehicle miles traveled be minimized, and where appropriate, special communities and neighborhoods be protected (LCP Policy 26), the two parking spots in this location do not raise concerns of these types.⁶ Finally, the appellant also contends that the project is inconsistent with applicable zoning for the area, stating that the parking area is not zoned for housing. However, the City's LCP does not include zoning designations for City rights-of-way like this. Thus, while true that the site is not zoned for housing, it is also true that it is not zoned at all, and rather is public space for public proposes, including public parking purposes such as allowed by the City-approved project.

⁶ And the Appellant also cites LCP Policy 8, which is a reference to private lands and thus not applicable here since this proposed project would be sited in the public right-of-way.

However, while the project, when viewed in isolation, may have minor impacts on public access to the coast (and could possibly provide some improved access for two oversized vehicles), the project is integrally related to the City's uncertified OVO and the related uncertified TSSP, which creates requirements for all individuals who wish to use the designated OVO parking spaces. The City's permit requires that all users of designated OVO parking spaces comply with the requirements of the TSSP, which as previously mentioned are rigorous. Specifically, the program qualifications are restrictive in some respects, and therefore could potentially be a hurdle for participation in the TSSP and access to the designated oversized vehicle parking spaces, especially for those oversized vehicle users of limited means where meeting all of the specified criteria may actually entail fairly significant costs. Therefore, with what little has been reviewed and analyzed of the OVO or related TSSP to date, it is difficult to assess the broader implications of the City's approval of this project for public access to the coast. Indeed, the overall access impacts of the OVO on the unsheltered community as a whole in Pacifica remains entirely unclear, though it is likely implementation of the OVO restricts coastal access for the unsheltered community and others who use oversized vehicles. Further, it appears that the City has continued enforcement of the OVO in the coastal zone despite lacking a CDP or LCP authorization for the significant restrictions on oversized vehicles in the ordinance. Additionally, the requirements to join the program could be restrictive, and it is unclear whether the 13 total parking spots provide adequate parking to balance the restrictions of the OVO for the unsheltered individuals in Pacifica. Therefore, there is potential for a substantial environmental justice issue which is further discussed below. Thus, the City needs to issue a CDP for the OVO as a whole before the TSSP spots are authorized in order to more thoroughly analyze these issues, all of which creates a substantial issue of LCP conformance regarding public access.

2. Environmental Justice

The project's potential impacts on public access to the coast raise related environmental justice concerns that the Commission may consider in evaluating whether to accept the appeal.

Applicable Coastal Act Provisions

The Coastal Act explicitly identifies the need to ensure equality and environmental justice and allows the Commission to consider coastal resource issues and impacts through that lens in appeal cases, like this, even if the LCP does not explicitly address environmental justice, as is the case here. The Coastal Act states:

Section 30013. *The Legislature further finds and declares that in order to advance the principles of environmental justice and equality, subdivision (a) of Section 11135 of the Government Code and subdivision (e) of Section 65040.12 of the Government Code apply to the commission and all public agencies implementing the provisions of this division. As required by Section 11135 of the Government Code, no person in the State of California, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, shall be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination, under any*

program or activity that is conducted, operated, or administered pursuant to this division, is funded directly by the state for purposes of this division, or receives any financial assistance from the state pursuant to this division.

Section 30107.3. (a) *“Environmental justice” means the fair treatment and meaningful involvement of people of all races, cultures, and incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.* (b) *“Environmental justice” includes, but is not limited to, all of the following:*

- (1) The availability of a healthy environment for all people.*
- (2) The deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities.*
- (3) Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision making process.*
- (4) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.*

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

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

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

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

Analysis

The first step in this environmental justice analysis is to determine whether unsheltered individuals that use an oversized vehicle as a place to sleep at night, as well as a means of transportation more broadly requiring a parking space, constitute an “environmental justice” community to which the Coastal Act’s environmental justice provisions and the Commission’s EJ Policy apply. If so, the next step is to identify to what extent the City-approved project may adversely and disproportionately affect those individuals. In answering these questions, the Commission’s consideration necessarily focuses on how the project’s coastal resource impacts may disproportionately affect such individuals compared to others affected by the project.⁷ The Commission is also tasked with ensuring that communities of concern can access the process to make their views known and to help shape the debate on potential Commission decisions.

Based on the evaluation criteria set forth above and consistent with prior Commission actions, the Commission finds that unsheltered individuals⁸ that use an oversized vehicle as a place to sleep at night and/or as a means of transportation more broadly requiring a parking space are in fact an environmental justice community. The Coastal Act’s definition of environmental justice as set forth in Section 30107.3 above commits the Commission to the fair treatment and meaningful involvement of people of all “races, cultures, and incomes ... with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” Unsheltered individuals that use an oversized vehicle as a place to sleep at night and/or as transportation more broadly can generally be classified as a lower income segment of the population that are acutely struggling to attain some of society’s most basic needs, such as safe housing, making them particularly vulnerable to outside environmental hazards. Although disaggregated data for unsheltered individuals living in an oversized vehicle does not appear to exist, people of color tend to make up a much higher percentage of the overall unsheltered population, particularly African Americans (who statewide make up nearly 40 percent of the unsheltered population but represent only 6.5 percent of the general population).⁹ In the City of Pacifica, 161 people were identified as unsheltered as part of the 2022 one-day homeless count conducted every

⁷ This focus derives from the fact that the Coastal Commission is a coastal management agency charged with the protection and enhancement of the State’s coastal resources. Thus, the Commission’s review of environmental justice issues is necessarily rooted in its evaluation of coastal resource benefits and burdens, as opposed to non-coastal resource issues, such as broader societal issues associated with public health and general welfare, which are the purview of other government agencies and entities.

⁸ According to the U.S. Department of Housing and Urban Development, people experiencing homelessness may have access to shelter or may be considered “unsheltered” if their primary nighttime residence is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground. The analysis in this report focuses on unsheltered individuals who sleep in oversized vehicles at night and/or who use oversized vehicles as transportation and need a place to park during the day.

⁹ As detailed by the U.S. Department of Housing and Urban Development in its 2019 Annual Homeless Assessment Report to Congress.

year in order to meet federal requirements and gather information to help illustrate the scope of the issue.¹⁰

Finally, Commission staff has consulted a number of environmental justice experts in California who uniformly advised that, based on the characteristics of this vulnerable population, the unsheltered individuals that use an oversized vehicle as a place to sleep at night and/or use them as transportation and need to park by day definitely qualify as an environmental justice community. Thus, the Commission here finds that such unsheltered individuals qualify as an environmental justice community to which the Coastal Act's environmental justice provisions and the Commission's EJ Policy apply.

To date, a key area of controversy associated with the City-approved project has been the impacts that implementation of the City's OVO and its parking restrictions will have on unsheltered individuals who use oversized vehicles as a place to sleep overnight and/or to park during the day.¹¹ The City's action on the two oversized vehicle parking spots here (or four total considering the similar second appeal on the Commission's August agenda as well), would provide for oversized vehicle-only parking in designated areas, which would be subject to a variety of prerequisites and requirements. In total, the City's TSPP would provide 13 oversized vehicle-only parking spaces throughout the City, with 5¹² in the coastal zone, which would provide some parking to the unsheltered community using oversized vehicles. That said, the prerequisites to even apply to park in these oversized vehicle-only parking spaces are quite thorough and restrictive in some respects, and therefore could potentially be a hurdle for participation in the TSPP and access to the designated oversized vehicle parking spaces, especially for those oversized vehicle users of limited means where meeting all of the specified criteria may actually entail fairly significant costs. Based on the way in which the TSPP interacts with the OVO, and its 24 hour a day and 365 day a year oversized vehicle parking prohibitions and restrictions on oversized vehicle parking, the overall impact of the OVO on the unsheltered community is unclear, as is the way in which the TSPP parking spots will balance the restrictions that the OVO will have on the unsheltered community. As mentioned above, the City has not obtained a CDP (or LCP amendment) authorizing either the City's OVO or the related TSPP in whole.¹³ Thus, the impact of the entire program on unsheltered populations in the Coastal Zone may be greater and requires a full analysis of the OVO program to understand the full impact of the ordinance on coastal access, including importantly for the directly affected unsheltered population. In other words, evaluating the extent to which the project interferes with public access to the coast, as the appeal contends, requires a broader understanding of the entire way in which the City is regulating and restricting oversized vehicles in the first place. Finally,

¹⁰ Known as a "point-in-time" count.

¹¹ While this may not be the specific concern raised by the appellants in this appeal, the broader controversy surrounding public access impacts of restricting oversized vehicles generally, how the City does so, and what restrictions are imposed on users of designated OVO parking spaces, is all integrally related to an evaluation of the public access impacts of designating OVO parking spaces.

¹² The 5th parking spot in the Coastal Zone is going through the local process as CDP-437-22 and is not in the Coastal Commission appeals jurisdiction.

¹³ As discussed more fully below, the City's failure to obtain CDP/LCP authorization for the OVO prior to its implementation in 2020 is a Coastal Act violation.

the City's uncertified OVO, which prohibits oversized vehicle parking in the coastal zone, cannot currently be implemented in the coastal zone without a CDP or LCP amendment, and therefore is being tracked as a violation by the Commission's enforcement division. Absent the City going forward with a CDP or LCPA for the OVO, oversized vehicle users who would have used these TSPP parking spaces will be able to park anywhere in the coastal zone, assuring impacts to potential TSPP participants of the Commission taking jurisdiction over the City-approved project will be negligible.

In conclusion, the appeal raises a substantial issue as to the City-approved project's consistency with public access and environmental justice policies of the Coastal Act and the public access policies in the certified LCP.

3. Habitat

Applicable LCP Provisions

The LCP contains a number of provisions related to habitat protection. Applicable LCP provisions include:

LUP Policy 12: *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of wastewater discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

LUP Policy 18: *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

LUP Policy 23: *New development, except as otherwise provided in this policy, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels. Where feasible, new hazardous industrial development shall be located away from existing developed areas. Visitor-serving facilities that cannot feasibly be located in existing*

developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

IP 9-4.4302 Definitions. ... (f) *“Buffer” shall mean an area of land adjacent to primary habitat, which may include secondary habitat as defined by a qualified biologist or botanist, and which is intended to separate primary habitat areas from new development in order to ensure that new development will not adversely affect the San Francisco garter snake and wetlands habitat areas.*

IP Section 9-4.4403 Habitat Preservation. (a) *Intent. The provisions of this section shall apply to all new development requiring a coastal development permit in the CZ District and shall be subject to the regulations found in Article 43, Coastal Zone Combining District. The intent of these provisions is to protect, maintain, enhance and restore the following types of environmentally sensitive habitat as identified in the LCP Land Use Plan...*

(e) Development Standards for Wetlands and Wetland Buffer Areas. The following minimum standards shall apply to a wetlands and wetlands habitat area.

(1) No new development shall be permitted within a recognized wetlands habitat area;

(2) Limited new development may be permitted within a recognized wetlands habitat buffer area subject to the following standards: ...

(iv) Public access through wetlands shall be limited to low-intensity recreational, scientific, or educational uses. Where public access is permitted, it shall be strictly managed, controlled, and confined to designated trails and paths as a condition of project approval;

(v) Alteration of the natural topography shall be minimized;

(vi) Runoff and sedimentation shall not adversely affect habitat areas;

(vii) Alteration of landscaping shall be minimized unless the alteration is associated with restoration and enhancement of wetlands; ...

(ix) New development adjacent to the buffer shall not reduce the biological productivity or water quality of the wetlands due to runoff, noise, thermal pollution, or other disturbances;

(x) All portions of the buffer shall be protected pursuant to Section 9-4.4308, Permanent Environmental Protection;

(xi) Potential impacts identified in the habitat survey shall be mitigated to a level of insignificance where feasible; and

(xii) Mitigation measures identified in the habitat survey shall be considered and made conditions of project approval where necessary to mitigate impacts

Analysis

The LCP requires protection of wetlands, ESHA, and sensitive habitat. The Appellant contends that the City did not analyze the potential environmental impacts of this project as part of its approval which raises concerns about the nearby wetlands and California red-legged frogs (CRLF). Here, despite the Appellant's contentions, there is no evidence in the record to suggest that the parking spaces in question are anywhere near a wetland, ESHA, or areas occupied by sensitive species. As to allegations that users would improperly dispose of wastes, and such disposal would lead to impacts on such areas/species as wastes migrated, several things are noted.

First, the City-approved project requires that Pacifica Resource Center inspect oversized vehicles in the TSPP to ensure that they include working toilet and waste disposal facilities. Second, users of the parking spaces are required to abide by requirements to properly dispose of gray water, black water, and trash and recyclables. Third, the parking spaces would be accompanied by a recreational vehicle dump station¹⁴ (located at 2212 Beach Boulevard)¹⁵ and a mobile dump station service that would be available to all parking permittees. Fourth, Pacifica Resource Center staff would monitor parking spaces to ensure that the areas are maintained in a clean manner, including in terms of garbage and debris. Fifth, conditions of the City CDP require participants to comply with all Bay Area Air Quality Management District regulations applicable to any generator use. And sixth, the Pacifica Resource Center can provide written warnings to participants for failing to comply with applicable rules, where their parking permit and participation can be revoked if needed. These types of avoidance and mitigation measures are designed to prevent the dumping of black or grey water, and to control debris, and should be sufficient to avoid any significant impacts to any nearby habitat areas.¹⁶

In conclusion, the Appellant's habitat contentions do not raise a substantial Coastal Act or LCP issue.

¹⁴ A drive-up facility for oversized vehicles that includes a connection point to the sanitary sewer that allows oversized vehicles with wastewater and grey water collections systems to 'dump' their accumulated tanks.

¹⁵ The Commission is not aware of any such dump station currently at this location. It is in the Coastal Zone (at the City's facility at that address, including corporation yard facilities), and its development and use would require its own CDP.

¹⁶ As the Commission is aware from past actions, the proposed location for these two temporary parking spots is approximately 400 feet away from a known CRLF habitat that was previously determined to be ESHA, per adopted findings for Commission CDP No. 2-19-0026. The City also determined that the project was exempt from the California Environmental Quality Act (CEQA) for Class 1 and 4 exemptions under CEQA Guidelines 15301 and 15304 and the "Common Sense" exception.

4. Violation

This appeal raises Coastal Act and LCP enforcement issues because the City adopted and implemented its OVO (including both the oversized vehicle parking restrictions, as well as the more physical development that accompanied them e.g., installation of parking restriction signs) in 2020 without an LCPA and without a CDP, and has continued to enforce the OVO, despite this procedural issue. This occurred despite the City being informed by Commission staff prior to OVO implementation that a CDP/LCP authorization was required before implementing the program in the coastal zone.

Although development has taken place prior to this City CDP action that has been appealed to the Commission, consideration of this appeal by the Commission has been based solely upon the City's LCP and the Coastal Act's public access provisions, all as informed by the Coastal Act's environmental justice provisions and the Commission's EJ Policy. The City's approval of the subject CDP (CDP-438-22) and the Commission's finding of substantial issue on the appeal (Appeal No. A-2-PAC-22-0031) in no way resolves this Coastal Act/LCP violation, nor does the Commission taking action on substantial issue condone or authorize prior or future implementation of the unpermitted OVO. In addition, the Commission's action on this appeal does not constitute an implied statement of the Commission's position regarding the legality of City implementation of the unpermitted OVO without a CDP (and without an LCP amendment). This matter has been referred to the Commission's enforcement division to consider options for future action to address the violation. The Commission's enforcement division is continuing to investigate and monitor this outstanding Coastal Act/LCP violation, which will need to be addressed by the City in a future action. And to be clear, since the City is currently implementing its OVO in the Coastal Zone without authorization then that is again a knowing and intentional violation of Coastal Act and LCP permitting requirements, which by definition include additional penalty provisions.

Finally, Commission review and action on this appeal does not constitute a waiver of any legal action with regard to the identified violations (or any other violations not yet identified), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken without a CDP, or of any other development, except as otherwise expressed herein.

5. Conclusion

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP and/or Coastal Act public access conformity such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP conformance. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue: the degree of factual and legal support for the City's decision; the extent and scope of the development as approved or denied by the City; the significance of the coastal resources affected by the decision; the precedential value of the City decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. The Commission may, but need

not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well. In this case, the five factors, considered together, support a conclusion that the City's approval of a CDP for the proposed project raises a substantial issue of LCP and Coastal Act conformance.

First, in terms of the degree of factual and legal support for the City's decision, while there is factual and legal support for the City's decision to approve the project as consistent with the LCP's wetland and ESHA policies, significant questions exist concerning the factual and legal support for the City's determination that the project is consistent with public access policies of the Coastal Act and certified LCP. As described in the findings above, evaluating the extent to which the project interferes with public access to the coast, as the appeal contends, requires a broader understanding of the way in which the City is regulating and restricting oversized vehicles in the first place via the OVO. Here, however, it is unclear how the OVO, which has not gone through the local CDP process, would impact users of oversized vehicles, including unsheltered individuals who are considered an environmental justice community. It is also unclear whether the City's TSPP, which is also uncertified, provides appropriate restrictions on users of designated oversized vehicle parking spaces. Thus, there are factual and legal gaps in the City's analysis and decision. Therefore, the first factor weighs in favor of a finding of substantial issue.

Second, with respect to the extent and scope of the City-approved development, the development is limited to two 30-foot by 10-foot designated parking spaces, in total encompassing a 600 square-foot area on an already partially paved area where general public parking is currently occurring. However, the City approved a separate CDP for two additional oversized vehicle parking spaces elsewhere in the Coastal Zone with similar conditions and requirements to comply with the uncertified TSPP (a project that is also on appeal and on the Commission's August agenda). As mentioned previously, however, the CDP appealed to the Commission is integrally related to the City's OVO and the related TSPP, both of which are uncertified, and which together could have much greater impacts on public access to the coast that are important to weigh in the balance. Thus, the extent and scope of this project is not insignificant and is greater than these two parking spaces alone. The second factor also weighs in favor of finding substantial issue.

Third, with respect to the significance of affected coastal resources, the proposed project is located on a partially paved parking area that already allows for general public parking, and the nearest habitat areas are sufficiently far enough away that the City-approved project is extremely unlikely to affect those resources. However, as described in the findings above, the appealed project raises important public access concerns that are amplified when viewed through an environmental justice lens, as the City-approved oversized vehicle parking spaces are integrally related to the City's uncertified OVO, which severely limits parking of oversized vehicles in the coastal zone. The third factor also weighs in favor of finding substantial issue.

Fourth, with respect to the potential to set an adverse precedent for future interpretations of the LCP, the proposed project has the potential to set an adverse precedent because the City-approved permit requires users of the designated oversized

vehicle parking spaces to comply with the uncertified TSSP, which could be used as precedent for future projects and interpretations of the LCP by the City and other parties. Therefore, the fourth factor weighs in favor of finding substantial issue.

Finally, as to the fifth factor, the City-approved project does raise issues of regional and statewide significance. The scope of the project may be limited to two dedicated parking spots in this particular location (with a total of four parking spots in the Coastal Zone when considering the related local CDP). But the City’s designation of only four parking spaces for oversized vehicles in the City’s coastal zone, and prohibition of these vehicles in many other areas that may be used for coastal access, could establish a precedent for other local governments considering similar ordinances restricting oversized vehicles. As described above, restrictions like those contained in the City’s OVO raise environmental justice concerns that are a matter of significant statewide importance and importance to the Commission, as reflected in the Commission’s Environmental Justice Policy. Thus, the fifth factor also supports a finding of substantial issue.

In this case, these five factors, considered together, support a conclusion that the appeal of the City’s approval of a CDP for this project does raise a substantial issue of conformance with public access policies of the Coastal Act and certified LCP. Thus, and for all the reasons stated herein, the Commission finds that Appeal Number A-2-PAC-22-0031 raises a substantial issue of conformance with the certified City of Pacifica LCP and the public access policies of the Coastal Act.

6. APPENDICES

A. Substantive File Documents¹⁷

- City of Pacifica Final Local CDP Action Notice
- Appeal of City CDP Action

B. Staff Contacts with Agencies and Groups

- City of Pacifica Planning Department

¹⁷ These documents are available for review from the Commission’s North Central Coast District office.

Public Comments

Agenda Item 16

Written Comments Received By 12pm on 8/8/2022



August 8, 2022
City Council Meeting

From: Vicki Sundstrom [REDACTED]
Sent: Monday, August 8, 2022 11:42 AM
To: Public Comment
Subject: City Council Agenda Item 16 - Housing Element Update Community Engagement Plan

[CAUTION: External Email]

The public engagement process in collecting community feedback to speak to this was shamefully bad.

The "flash vote" survey was sent out on a Wednesday afternoon, 2:15pm to the people already in their flash vote database. Many, including myself, who weren't in the data base did not know about it and certainly did not know it was limited to 48 hours. Of the people who participated, only half were in the database, the other 25% came from Christine Boles sharing the survey online.

What's truly shameful is that the feedback process further marginalized the people you need to engage with - the ones who need homes - the workforce, the essential workers - aren't going to be in the database, may not have email accounts, may not be able to stop their job and respond to emails, may not speak English.

How will you engage with them?

Vicki Sundstrom
Fairmont, District 1

CAUTION: This email originated from outside of the City of Pacifica. Unless you recognize the sender's email address and know the content is safe, do not click links, open attachments or reply.

From: Suzanne Moore [REDACTED]
Sent: Monday, August 8, 2022 12:04 PM
To: Public Comment
Subject: Fwd: 8/8/22 City Council consideration item #16

[CAUTION: External Email]

----- Forwarded message -----

From: Suzanne Moore [REDACTED]
Date: Mon, Aug 8, 2022 at 12:03 PM
Subject: 8/8/22 City Council consideration item #16
To: <citycouncil@pacificacity.gov>
Cc: Suzanne Moore [REDACTED]

Honorable Council Members,

I suggest an immediate City-wide mailer to educate the public on the importance of the Housing Element and community engagement. A mailer seems the only effective way to reach all residents including those with computer access challenges. All community meetings should provide hybrid options for in-person and virtual attendance.

I am concerned about the City's intention to use the grace period for the Housing Element process. The process timeline is pressured and has community repercussions if deadlines go unmet. May I suggest early utilization of HCD consultants, tools, and examples of previously certified Housing Elements. We can use successful plans as templates for our draft. Let's take this time to create a draft that includes mandated Fair Housing expectations including anti-displacement actions, preservation of existing low-income housing, and construction of moderate to very-low income housing. Thank you.

--
Suzanne Moore
Home [REDACTED]
Cell [REDACTED]

--
Suzanne Moore
Home [REDACTED]
Cell [REDACTED]

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August 8, 2022
Pacifica City Council Meeting

Public Comments

Oral Communications

Written Comments Received By 12pm on 8/8/2022



August 8, 2022
City Council Meeting

From: Richard Harris Jr. [REDACTED]
Sent: Friday, August 5, 2022 5:20 PM
To: Murdock, Christian; Public Comment; Coffey, Sarah; _City Council; Woodhouse, Kevin; 'Potter, Spencer (REC)'; Phil Ginsburg; O'Connor, Bonny; Pacifica Permit Tech; _DPWassistance Group; Engineering Division; Police; Jeff Guillet
Cc: [REDACTED]; 'Lisa Villasenor'; 'HELEN DUFFY'; Richard Pettler; 'Bob Downing'; 'Bo Links'
Subject: Public Comment on August 2022 Agenda Item Friday 7a - Appeal No. A-2-PAC-22-0029 (City of Pacifica Safe Parking Program, Bradford Way, Pacifica)
Attachments: Ltr.Cal.Coast.Comm.Appeal.A-2-PAC-22-0029.Pacif.OSV.8.5.22.pdf

[CAUTION: External Email]

All – For your files and consideration. Filed w/ CCC Fri, 8.5, 4:53 p.m.

Pax.

- Richard Harris

From: Richard Harris Jr. [REDACTED]
Sent: Friday, August 5, 2022 4:53 PM
To: NorthCentralCoast@coastal.ca.gov
Subject: Public Comment on August 2022 Agenda Item Friday 7a - Appeal No. A-2-PAC-22-0029 (City of Pacifica Safe Parking Program, Bradford Way, Pacifica)

Public Comment on August 2022 Agenda Item Friday 7a - Appeal No. A-2-PAC-22-0029 (City of Pacifica Safe Parking Program, Bradford Way, Pacifica)

Dear Coastal Commission, North Central Coast,

Please find enclosed for filing and distribution to Commission and Staff in the above-captioned matter, the comment letter of San Francisco Public Golf Alliance. Copies of this comment are being provided to the following persons and governmental entities. Please acknowledge receipt and distribution to Commission members and staff.

Thank you.

Copies will be immediately sent to:

Pacifica City Council

Pacifica Planning Commission

Pacifica Public Works Department

Pacifica Police Department

Pacifica Planning Department,

Christian Murdock, Acting Director

Bonny O'Connor, Senior Planner

Jeff Guillet, Appellant

Pacifica City Manager Kevin Woodhouse

Phil Ginsburg, General Manager, San Francisco Recreation and Park Department

Spencer Potter, San Francisco Recreation and Park Department

Leslie Davis, Helen Duffy, Lisa Villasenor, Sharp Park Business Women's Golf Club

Bob Downing, Sharp Park Golf Club

Bo Links, Esq.

Richard Harris

San Francisco Public Golf Alliance

1370 Masonic Avenue

San Francisco, CA 94117-4012

Phone:

eMail:

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SAN FRANCISCO
PUBLIC GOLF ALLIANCE



1370 Masonic Ave., San Francisco, CA 94117 • 415-290-5718 • info@sfpublicgolf.org

August 5, 2022
By e-mail

California Coastal Commission
c/o North Central Coast District Office
455 Market St., Suite 228
San Francisco, CA. 94105

Re: Coastal Commission Meeting, Friday, Aug. 12, 2022, 9 a.m.
Agenda Item Friday 7a - Appeal No. A-2-PAC-22-0029
City of Pacifica Safe Parking Program, Oversized Vehicle Parking
Request Removal of Bradford Way between Sharp Park Rd. and Fairway Drive
From Pacifica's Allowable Oversized Vehicle Parking List and Map
Substantial Issue Determination

Public Comment of San Francisco Public Golf Alliance:

- 1) We Support the appeal filed by Jeff Gullett and others in Appeal No. A-2-PAC-22-0029.
- 2) We agree with Commission Staff that Mr. Gullett's appeal Raises Substantial Issues, which should be the subject of a separate hearing.
- 3) These substantial issues include endangerment of protected coastal biological resources, including the protected California red-legged frog and endangered San Francisco garter snake and the Endangered Species Habitat Area in the Laguna Salada lagoon and wetlands

Dear Coastal Commission,

- I. **The site maps of (i) Sharp Park Golf Course and (ii) the proposed Bradford Way Oversized Vehicle parking spots, taken together with (iii) the City of Pacifica's storm drain map of the area and (iv) photographs a damaged and leaking oversized vehicle parked next to a storm drain in that same area, show the risk of contamination to biological resources in the Laguna Salada wetlands and ESHA, where the storm drain lines terminate.**

The historic Sharp Park Golf Course – a low-cost coastal public recreational resource – lies to the west of the Coast Highway in the Sharp Park neighborhood of Pacifica, at the bottom of a basin surrounded by coastal hills, roads, and residential neighborhoods, all as shown in the map that is Exhibit 1 to the Coastal Commission's Staff Report, copied below.

LOCATION MAP – PACIFICA SAFE PARKING PROGRAM – BRADFORD WAY
CITY OF PACIFICA, SAN MATEO COUNTY



A-2-PAC-22-0029
Exhibit 1
Page 1 of 1

The golf course serves as the area’s ultimate stormwater drain, and receives stormwaters running off from the streets and piped onto the golf course by pipes extending from the City of Pacifica’s storm sewer system, as shown in the City of Pacifica’s storm drain map for the area, which is copied below. Note that storm sewers (as depicted by blue lines) shown in this map in the vicinity of the “Project Site” as labeled in the above “Location Map” (Exhibit 1 to the Commission Staff’s July 29, 2022 Report) run from drains along the southwest shoulder of Bradford Avenue adjacent to the golf course, then through the course (underneath the fairways) to the edges of the “Wetlands” depicted in Exhibit 1.



Detail, showing Pacifica stormwater infrastructure (in blue), from Appendix A-4, Pacifica LCP Update, Existing Conditions Map, Sharp Park, West Fairway Park, and Mori Point¹

Wastewater and other pollutants and detritus dumped, spilled or strewn, inadvertently or otherwise, into the street and gutter will be carried through the storm drains to Laguna Salada, endangering the wetland and its inhabitants, including the threatened California red-legged frog and endangered San Francisco garter snake.

The threat of such spills and detritus from residential oversized vehicles is well-documented, both generally and very specifically at the City of Pacifica’s proposed Oversized Vehicle Parking spots on Bradford Way. At a June 28, 2021 Pacifica City Council hearing on oversized vehicle parking, the City Council heard testimony from Pacifica residents Shelby Jacquez, Charlotte Mecozzi, Irika Walters, and Cynthia Pagan of human and pet waste and strewn garbage from recreational vehicles parked in Pacifica neighborhoods.² The problem of stealth gray- and black water dumping from recreational vehicles is commonly known and openly discussed in the social media.³

And see the photographs, below, taken in February 2022, the originals of which are attached as Figures 7 (93/105) and 9 (95/105) to the June 22, 2022 appeal of appellant Jeff Guillet (which appeal is Exhibit 5 in the Exhibits to the Commission Staff’s July 29, 2022 Report.) Taken together, these photos show an oversized vehicle, parked on Bradford Way next to the golf course, with a leaking tank, parked adjacent to one of the Bradford Way storm sewer drains.

¹ ESA: Pacifica LCP Update, Appendix A-4, Existing Conditions Map, Sharp Park, West Fairway Park, and Mori Point: https://drive.google.com/open?id=13iMu0-kz_DKa12ZWbz7jvksRS-WbrTl8.

² Public Comment at Pacifica City Council meeting, Agenda Item # 8, June 28, 2021, at pages 7, 11, 14, and 17: <https://www.cityofpacific.org/civicaX/filebank/blobload.aspx?BlobID=18632>

³ See: “Stealth Greywater Dumping, Do You, or Don’t You?” <https://liveworkdream.com/2011/06/03/stealth-greywater-dumping-do-you-or-dont-you/>



Figure 7 - On February 19, 2022, an oversee vehicle parked on Bradford Way in the same proposed space was hit by another vehicle, illustrating how unsafe this area is to park.



Figure 9 - The storm drain on Bradford Way where the oversized vehicle was parked. The badge on the curb above the storm drain reads, "No Dumping. Drains to Ocean"

The Commission Staff's July 29, 2022 Report, at page 3, too lightly dismisses these concerns as follows: "Other coastal resource impact contentions regarding habitat and species are not significant issues due to the City-approved program occurring in already developed areas, well away from such resources, as well as the good neighbor requirements that would assure such impacts are avoided, which are built into the program." But this is not well taken. First, the Bradford Ave site, adjacent to the golf course, is not in an "already developed area" (unless the golf course is considered "development"), and the Staff Report does not account for the fact that the nearby storm drains on Bradford Avenue pipe the stormwater – together with anything spilled or discarded to the street and gutter -- directly to the vicinity of the Laguna Salada wetlands. (See the foregoing maps and photos.)

II. Pacifica's Local Coastal Plan and Public Resources Code Section 30240 prohibit development – including provisional or temporary housing such as OSV housing for vehicle-dwellers – that carries a risk of adversely impacting Sharp Park's Laguna Salada wetlands and its threatened and endangered species.

The Conclusions section of Pacifica's existing (1980) Local Coastal Land Use Plan,⁴ under the section heading "Rare and Endangered Species," identifies "The Sharp Park Lagoon and Marsh [as] a known habitat of the rare and endangered San Francisco garter snake," (page C-99), and provides that "The habitat shall be **protected** and enhanced . . ." (page C-101). In a provision captioned "Development Near Wetlands and Creeks," the Local Coastal Land Use Plan provides that "**development . . . applies not only to structures but also to other uses**, such as accesses, parks, recreation, etc." (page C-101), and that "**Wetlands . . . and water quality shall be protected** and enhanced by regulations . . .and other appropriate measures." (Page C-102) (emphases added)

The Oversized Vehicle Parking spots at Bradford Way constitute a form of official sanctioning of housing for vehicle-dwellers, including their pets. This is development of housing (albeit temporary and mobile) on a city street that is precluded under the above-cited sections of the existing Pacifica Local Coastal Land Use Plan.

The California Public Resources Code at Section 30240,⁵ provides at 30240(a) that "Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values . . .," and provides further at 30240(b) that "Development in areas **adjacent to environmentally sensitive habitat areas and parks and recreation areas** shall be sited and designed to **prevent impacts** which would significantly degrade those areas . . ." (emphasis added)

⁴ City of Pacifica Local Coastal Land Use Plan (1980)
<https://www.cityofpacificacalifornia.org/civicax/filebank/blobdload.aspx?BlobID=7043>

⁵ California Public Resources Code Section 30240:
https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=20.&title=&part=&chapter=3.&article=5.

III. CONCLUSION: For reasons of environmental health of the Laguna Salada wetland and its creatures, and as required by the Pacifica Local Coastal Land Use Plan, Bradford Way adjacent to the golf course is inappropriate for Oversized Vehicle Parking. A substantial issue is raised on these points – in addition to other points raised in the Appeal, that should be the subject of additional hearing by the Commission.

Respectfully,

San Francisco Public Golf Alliance

Richard Harris

Richard Harris, President

cc:

Pacifica City Council

Pacifica Planning Commission

Pacifica Public Works Department

Pacifica Police Department

Pacifica Planning Department,

Christian Murdock, Acting Director

Bonny O'Connor, Senior Planner

Jeff Guillet, Appellant

Pacifica City Manager Kevin Woodhouse

Phil Ginsburg, General Manager, San Francisco Recreation and Park Department

Spencer Potter, San Francisco Recreation and Park Department

Leslie Davis, Helen Duffy, Lisa Villasenor, Sharp Park Business Women's Golf Club

Bob Downing, Sharp Park Golf Club

Bo Links, Esq.

From: Coffey, Sarah
Sent: Monday, August 8, 2022 9:00 AM
To: Public Comment
Subject: FW: Road Safety Issues on Manor Dr., Pacifica

From: [REDACTED]
Sent: Sunday, August 7, 2022 2:06 PM
To: _City Council <citycouncil@ci.pacifica.ca.us>
Cc: Coffey, Sarah <scoffey@pacifica.gov>
Subject: RE: Road Safety Issues on Manor Dr., Pacifica

[CAUTION: External Email]

Esteemed Council members,

I urge a discussion on road safety issues on Manor Dr at the next meeting. Several of my neighbors, myself included, who live on Manor Dr., have unfortunately over the years experienced our vehicles and or homes crashed into by speeding and or drunk drivers; the recent one being a week ago on the 300 block.

I suggest placing physical calming elements i.e. humps, bumps or dips on certain parts of Manor Dr. that does not exceed 8% slope, and or more Stop signs.

Also, perhaps just blocking Manor at Miller st. to through traffic would be the best! Yes, this is extreme but, what else can truly slow traffic down?

Thank you,

Patricia McGregor

[REDACTED]

Pacifica, CA.

[REDACTED]

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From: Ed Markey [REDACTED]
Sent: Monday, August 8, 2022 12:03 PM
To: Ed Markey; Public Comment
Subject: OSV Parking

[CAUTION: External Email]

Pacifica City Council,

I am writing regarding Pacifica opening two miles of roadway to be used for oversized recreational vehicles to park for an extended period of time. Part of that allotted space is Ridgeway Drive in East Fairway Park. I am a homeowner in this neighborhood, and I am strongly opposed to designating this area for what essentially could be classified as new housing. I have numerous concerns about this issue including:

- The City of Pacifica did not properly notify the public of their plans to sanction RV parking in our neighborhoods or allow access to city meetings that addressed the issue. I did not receive notification alerting me of upcoming hearings or proposed plans. In addition, I attempted to speak at one of the hearings and was denied my place due to time constraints. Several of my neighbors have reported similar issues. I believe the RV arrangement was made without sufficient public input, and therefore a violation of the Brown Act. A simple Internet search revealed the City of Pacifica has been accused of violating the Brown Act in recent unrelated matters. It is concerning to me that I am living in a city where my leadership has made a habit of conducting public meetings in an unlawful manner.
- The decision to create new housing was done without an Environmental Impact Report. It appears city officials have tried to circumvent this point by allowing permits in selected locations to expire after twenty-nine days. This would technically prevent applicants from achieving “permanent residency.” This is a legal loophole that I believe will be exploited frequently. It seems easy to deduce that people will re-apply after twenty-nine days and reside at certain locations for much longer. This point suggests collaboration in closed door hearings that only benefits the council’s agenda.
- California law allows for the public to be notified about sex offenders per section 290 of the California Penal Code. It is my understanding that there will be no screening or vetting process when it comes to who will park in affected areas. It is common for sex offenders to register as “transient” to prevent being monitored as closely. It should be the moral, and possible legal, duty of our leaders to notify the public when a “transient” sex offender moves into our neighborhood. It would be national news if one of our children was victimized by a city sanctioned RV dweller who was allowed to move freely in areas specifically provided by the city for the unsupervised offender.
- There is also a narcotics registry per section 11590 of the Health and Safety code. The same principles would apply here when it comes to notifying the public.
- I have concerns over waste management and proper plans to manage the waste created by campers. There were two RV’s parked on Bradford Way (adjacent to the third hole of Sharp Park Golf Course) beginning in late June 2022. On 07/07/22, I walked past this location and discovered someone had defecated and discarded used napkins containing feces along the sidewalk. Many of the RV’s I see around town are old and in disrepair. I suspect the waste management systems in these vehicles may

not be up to code. This is not just a disgusting image, it is a threat to public safety. Our city leaders seem to want to scatter the unhoused citizens around town. This makes it much more difficult to manage their waste and for them to access other necessary services. I believe everyone would benefit if the unhoused had a centralized location in which to reside.

We can all agree that unhoused citizens deserve a place to live. But residents of East Fairway Park, which includes children playing, residents walking dogs without apprehension, students on the way to and from school, should not have to deal with unscreened people coming and going. Ridgeway is the main thoroughfare in a neighborhood of homeowners who chose this out-of-the-way corner of the city as an ideal spot to raise their families. Many of us have invested our savings in what we believed was an ideal place to lay down roots. I do not believe most of us would have bought homes here if it was anticipated roving encampments might move in. If we decided to flee the area because of a decision by the council, we would surely forfeit substantial property value. No one selling their home would be proud to host an open house beside a convoy of RVs.

I was taught that the government was a representation of all citizens and not any one select group. The government in Pacifica failed the vast majority of the people it serves when they selfishly closed doors to meetings that should have been open to the public. The circumstances that surround the passing of RV legislation appear to indicate our city council wanted to create this policy at all costs and without inevitable backlash from the general public. Elected officials have a duty to hear from and serve their citizens. It has crossed my mind that the city council may have been working under pressure from representatives of the unhoused rather than the community it was elected to serve. It seems our leaders worked hastily and unlawfully in response to this pressure. By doing so, they overlooked the taxpayers, voters and small business owners who put them in office. Let this be a lesson to us all not to vote while inadequately informed.

Regards,
Edward T. Markey
(East Fairway Park)

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