

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
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November 10, 2020

Santa Cruz City Council
809 Center Street, Room 10
Santa Cruz, CA 95060

Subject: Proposed Front Street/Riverfront Project

Dear Mayor Cummings and Councilmembers:

We would like take this opportunity to express our concerns about the proposed Front Street/Riverfront project that is scheduled to be considered at the November 10, 2020 City Council meeting. We appreciate the continued communication with staff from the City's Planning and Community Development Department regarding this project, and we very much recognize the need for more affordable housing opportunities in Santa Cruz. In fact, the Coastal Commission approved a City Local Coastal Program (LCP) amendment in 2018 that was in part meant to help facilitate the provision of such housing downtown, including specifically allowing increased height at the subject site so that such projects could better 'pencil out'. Those heights were and are significant, and not without controversy and detractors due to their potential effects on public views, San Lorenzo River resources, and downtown/River aesthetics, but the Commission ultimately decided to allow such scale and massing given City representations at the time. The project before you now exceeds those LCP established maximum heights by over 60%, and the maximum allowed upper floor dimensions by up to 40%, well in excess of what the LCP allows. As we have previously indicated (see December 16, 2019 letter on this same project, attached hereto and incorporated by reference), we support the City's goals to stimulate well-planned development that can add critically-needed affordable units to the City's housing stock while simultaneously protecting coastal resources. But we are concerned that this project does not adequately meet the balance established and required by the LCP. Please consider the following:

As proposed, the project is inconsistent with the LCP with respect to the buildings' allowable mass and scale. Specifically, the 2018 LCP amendment authorized a maximum building height of up to 50 feet at this location, where that height could be increased to 70 feet under certain circumstances, and allows up to 5 floors. Again, in changing allowable maximum heights and floors, the Commission was concerned about the coastal resource implications of such increased massing, but was swayed by the City's arguments that such a height was necessary to be able to facilitate projects within that scope that would provide greater public benefits, such as increased affordable housing opportunities. Here, the proposed height of the buildings is 81 feet, or over 60% taller than the maximum base height allowed, and even over 15% taller than even the maximum of 70 feet when certain public benefit criteria are met. The project does not

appear to provide even the level of public benefit necessary for the Commission's 70-foot maximum (see also below). And while a maximum of 5 floors is allowed by the LCP when those public benefit criteria are met, the project includes 7. We are concerned with what appears to be a 'check the boxes' approach to identifying the criteria that might allow for height above 50 feet and above 5 floors, and strongly encourage more analytic rigor on this point. This analysis should not be based on the presumption that heights and floors can routinely be increased, but rather it must be grounded in the presumptions laid out by the LCP. Namely, that the allowed maximum height and floors that are appropriate for this site may be modified under certain circumstances and upon a showing of, among other things, significant public benefit. We don't believe that such circumstances and showings have adequately been identified for the proposed project.

In addition, and to help address some of the above-described coastal resource concerns, the 2018 amendment also limits the top floor square footage and top floor length to a maximum of 60% of the square footage of the floor immediately below the top floor and a maximum of 60% of the building's length. The LCP also requires a series of other related setbacks and articulation to help lessen perceived massing, including requiring that any height above the base allowed height be set back by 15 feet from lower building walls. The LCP indicates that the purpose of this proportional floor area relationship and setbacks/articulation is to help promote skyline variation and open-air space to help offset the large scale and massing that might otherwise be allowed in certain circumstances. Although the LCP allows for slight variations to the 60% top floor area limit to be *considered* for buildings that provide publicly accessible pedestrian connections to the Riverwalk, it doesn't *require* that these protective standards be reduced in such cases, and in fact this project provides no more connection than is already required by the LCP. In other words, the clear intent is to allow for some minor changes to upper floor dimensions provided a project provides some offsetting increased public benefits with respect to the connections that is over and above the minimum required by the LCP. Here, that is not the case. The airspace above is actually *more* encumbered by development than the minimum required. This project proposes top floors that are well in excess of the maximum 60% allowed, with one building's top floor area at 100% and the two other buildings' top floors at 82% of their lower floors area. In addition, top floor lengths are roughly 90% as long as the overall building lengths. In short, even if some minor variations might be appropriate, which it does not appear is the case here, the proposed project includes significant variations that essentially negate the intent of the LCP. Therefore, the project is not LCP consistent on these points either.

In short, the proposed project is inconsistent with the LCP's requirements on maximum height, number of floors, top floor proportional relationship, and required setbacks and we recommend that it be reduced to meet the requirements of the LCP. Again, just two short years ago, these maximum standards were determined by careful analysis (including of economic factors) just two short years ago of the parameters necessary for the City to achieve its goal of providing more affordable housing and other public benefits, while at the same time protecting downtown/River character and aesthetics,

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protecting the River as a resource itself, and reinforcing the connection from the downtown area to the levee and ultimately to the beach at San Lorenzo Point. We see no reason why the LCP cannot be respected with this project, and again recommend that the project only be approved if consistent with the LCP on these points.

Further, we are aware that State density bonus laws allow for some variations to local development standards to help facilitate affordable housing. But please note that such accommodation is not at the expense of the LCP, which is carrying out another State law, namely the Coastal Act. The LCP, as an extension of the Coastal Act is not a local development standard that may be exceeded under the density bonus laws. In other words, State density bonus laws do not somehow supersede or take precedence over the Coastal Act/LCP (and given they were enacted later than the Coastal Act, the legislature could have done so and did not). Rather, the laws must be synthesized and harmonized as best as possible. Here, the Coastal Act, and the City's LCP that implements it, must be understood in terms of density bonus law requirements, but those requirements do not mean that the proposed project can adversely impact coastal resources.

On this point the LCP is also instructive because it allows for some deviation to certain numeric LCP standards to facilitate affordable housing, including height and setbacks, but only if those deviations protect coastal resources. In allowing for such LCP provisions, the Commission found that "[W]hile some of the more quantitative LCP development standards (e.g. those related to height, density, and parking) may be relaxed so as to accommodate the increased residential density for the affordable housing units pursuant to the State Density Bonus Law, the more qualitative LCP policy requirements to protect coastal resources (e.g. related to protection of environmentally sensitive habitats, provision of public access, protection of public views, etc.) must still be adhered to in all cases, notwithstanding any bonus, concession, incentive, waiver, or reduction in development standards allowed under the State Density Bonus Law."

In other words, the Commission (and the subsequent certified LCP text) envisioned that there may be projects where the LCP's standard numeric zoning provisions might be able to be altered (including pursuant to density bonus law) based on case-specific facts demonstrating that such deviations did not adversely affect coastal resources. Given most of the City's LCP is over 30 years old, it seemed a reasonable proposition that there may be cases where those older and more generic Citywide standards might be able to be so varied in a particular site-specific project context without any adverse coastal resource impacts. This proposed project is not such a case because it is not subject to the older and more generic Citywide standards. This is because the Commission, just two years ago, explicitly determined what the largest building that this site could support that would still protect coastal resources when it explicitly established the site-specific mass and scale limits here. In other words, in this case, deviations to LCP numeric standards are *not* allowed because they would result in adverse coastal resource impacts based on the Commission's evaluation of the evidence as applied to this very site, as codified in the LCP. And to the extent there was a counter argument

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that the generic LCP language about potential quantitative variations somehow overrides and takes precedence over the more specific LCP language that applies to this specific site, it is a well-established principle of law that the more specific policies take precedence over less specific and more general policies.

We respectfully disagree with your staff's recommendation that you can deviate from LCP standards at this site based on State density bonus law to allow the scale and massing increases discussed above. In addition, we would note that the City's 20% inclusionary housing requirement dictates that this proposed 175-residential unit project provide 35 affordable units or pay a fee to the City to provide for same offsite. Here, the proposed project only includes 20 affordable units, or a little more than half of what is already required, and no inclusionary housing fee. In other words, this proposed project would actually provide less affordable housing than is already required, and on top of that, it proposes mass and scale deviations that are inconsistent with the LCP and that will adversely affect coastal resources when that is prohibited. Again, we do not support a project that is inconsistent with the mass and scale standards established for this site by the Commission two years ago, and we recommend that the project be modified to meet the LCP in those – and all – respects.

In closing, we very much recognize the need for affordable housing, and are very supportive of it in the coastal zone and the downtown area of Santa Cruz. As indicated above, the Commission up-zoned this site to be able to provide for same just recently. At the same time, such projects need to ensure coastal resource protection, and the Coastal Act/LCP needs to be respected in that process. Again, State density bonus law does not override the Coastal Act/LCP. Here, we have a proposed project that does not even come close to meeting the already required 20% inclusionary requirement, and that also proposes significant deviations to the LCP to accommodate same, ostensibly because State density bonus law says it can. Again, we respectfully disagree with that analysis, and would hope that the City can find a way to approve a project without LCP inconsistencies, and one that *at least* accounts for and/or provides the 20% inclusionary housing already required.

If you have any questions or would like to discuss these matters further, please contact me at (831) 427-4863.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ryan Moroney', with a stylized, wavy line extending from the end of the name.

Ryan Moroney
Central Coast District Supervisor
California Coastal Commission

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cc: SC Riverfront LLC, Front Street/Riverfront Project Applicant
Lee Butler, City of Santa Cruz Planning and Community Development Department Director

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December 16, 2019

Samantha Haschert
City of Santa Cruz Planning and Community Development Department
809 Center St., Room 101
Santa Cruz, CA 95060

Re: Notice of Preparation of an Environmental Impact Report for the Riverfront Project

Dear Ms. Haschert:

We received the above referenced Notice of Preparation (NOP) for the City's upcoming environmental impact report (EIR) on the Riverfront Project which proposes to merge five parcels and replace existing commercial buildings and parking lots with one 0.98-acre parcel and a seven-story mixed-use development containing 175 condominiums, 11,498 square feet of new commercial space, and at-grade and underground parking. About one-third of the merged parcel would be in the coastal zone and appeal area. The City's approved Local Coastal Program (LCP) is the standard of review for the portion of the proposed project in the coastal zone.

Thank you for engaging with our office early in the environmental review process; doing so will help identify and address the project's potential impacts to coastal resources. As a preliminary matter, we continue to strongly support the City's efforts to protect its coastal resources while simultaneously working to cultivate the Riverfront character of its downtown, create affordable housing, and protect the river's natural environment. The City's Downtown Plan and recent amendments to the City's LCP enacted to help carry out the Downtown Plan will act in tandem to advance those efforts. The purpose of this letter is to identify issues of LCP consistency as early as possible and propose avoidance and/or mitigation measures to address those issues during the CEQA review process. Our ultimate goal with this approach is to facilitate a streamlined environmental review process. The following comments apply to the portions of the proposed project that are located within the City's coastal zone.

Standard of Review

Much of the basis for the City's current environmental evaluation of this project is based on the City's General Plan 2030 and its associated EIR. However, for the portions of the project that are located in the coastal zone, these documents cannot be used to evaluate this project's impacts on coastal resources because neither the General Plan 2030 nor its EIR are formally adopted into the City's LCP. The project's EIR could help the process of determining how the project potentially impacts coastal resources by aligning some elements of the EIR scope towards the City's LCP. Specifically, the portion of the proposed project that lies in the coastal zone will be evaluated according to the City's certified LCP, including the City's Downtown Plan and the recent LCP amendments associated with the Downtown Plan, as that is the legal standard of review for approving coastal development permits.

Variations and Exceptions

The Riverwalk is a greatly under-utilized coastal access and recreation resource for the City. Accordingly, most of our concern about the scope of the project's EIR centers on the proposed project's use of variances and exceptions that could potentially undermine the development standards for this area of the downtown's coastal zone. The project includes several variances and exceptions to applicable development standards, including waivers for maximum building height, the Skyline Architectural Variation standard, minimum building setback requirements, and the Downtown Plan's design guidelines, among others. The statutory basis in the LCP for approving or allowing these exceptions and variances is not clear. Please explain the basis for each exception and why each exception is allowable. The EIR should also include a detailed chart or table indicating the Downtown Plan's existing development standards, what the project proposes, and how the standards are either met or exceeded, as well as the LCP-authorized basis for such exceptions or variances.

Visual Resources in the Coastal Zone

It appears that the proposed buildings may adversely impact visual resources if the already substantial design height and bulk allowed by the LCP are increased through the use of variances and exceptions, as discussed above. It is unclear how increasing the maximum building height permitted in the Downtown Plan's "Additional Height Zone B" area from 70 feet to the proposed 81 feet will protect visual resources, or if this proposed increase is even permissible by the LCP. The City's LCP (*Vol. 1, Community Design Element, Goal 2.2 and 2.2.1, p.85*) and the 2017 LCP amendments associated with the Downtown Plan state that the City will preserve important public views and viewsheds through a development's siting, scale, and other specific design guidelines that encourage carefully-planned and appropriately-designed growth. Numeric zoning standards for height and bulk are understood to be maximums to be subsequently modified in order to best meet core LCP policies. The EIR should therefore evaluate how the project's prominent location adjacent to the San Lorenzo River's western levee combined with its proposed 81-foot height (versus the 70-foot maximum allowed in the LCP) and the proposed shape and mass of the buildings (with setback and setback exceptions) would potentially impact coastal views to the south and downriver towards the ocean. We recommend that the EIR include detailed visual simulations to assess such impacts and that story poles be used to demonstrate buildings' height, setback, and setback configurations so that the public and decision makers can fully assess such impacts. We also recommend that the EIR show how the currently proposed design and possible design alternatives would provide view corridors from the street toward the river. The EIR should also include an evaluation of the project's impact (seasonally) on sunlight and shade in and around the site. *See LCP Vol. 1, Community Design Element Goal 2.2.*

Water Quality: Storm Water Collection, Treatment, and Discharge

The NOP provides limited details of how the project's storm water collection and treatment system would function. The EIR should include a detailed explanation of the proposed system, including how it is consistent with LCP provisions designed to protect the river's water quality (*See LCP Vol. 1, Environmental Quality Element Goal 2.3.1, and LCP Implementation Plan*

Section 24.14.050). Given the development's net increase in impervious surface area, minimizing storm water run-off and increasing the treatment and filtration of run-off is a high priority for a development site that drains directly into the adjacent river near its outlet to the ocean. The EIR should also examine the degree to which the site's pervious landscaping and other pervious surface area will be designed to function as bioswales to treat and otherwise manage storm water, and should incorporate the principles of "Low Impact Development" as much as possible. Also, in keeping with the increasingly more common design features of contemporary buildings in our dry region, the EIR should include a detailed description of how the project's rainwater run-off from its roofs can be filtered, stored, and used for the project's landscape irrigation or other uses.

Access

According to the NOP, the proposed project includes two pedestrian pathways that will provide public access to the Riverfront and to the project's proposed public plazas. These pathways address a goal shared by the City and Coastal Commission of stimulating public access to the Riverwalk. Although the NOP does not cite specific numbers, our understanding is that the buildings in the proposed project would have reduced setbacks and stepbacks from the pedestrian pathways and the street, which could compromise the aesthetics of the public accessways and outdoor plazas. The EIR should provide the amounts of setbacks and stepbacks and should evaluate the aesthetics and utility of the pedestrian pathways and public plazas in light of the proposed variances and exceptions to the LCP, i.e. will the pathways be well-lit and not overly obscured by shadows or towering building fronts, as these could be factors that adversely affect the public's use of these pathways (*See LCP Vol. 1, Community Design Element, Goal 3.6*). This effect of reduced setback and stepbacks could, in turn, reduce the appeal of using the public accessways and plazas and hinder public access to the Riverwalk from this project.

Coastal Hazards

The LCP requires that development should be planned and executed to mitigate known and foreseeable coastal hazards (*LCP Vol. 1, Safety Element, Goal 3.1*). Flooding and ground water intrusion are foreseeable risks for a development site on a coastal floodplain. Climate change will likely increase coastal storm intensity, raise sea levels, and allow ocean water to reach farther upriver more frequently as high tides correspondingly increase. The NOP states that the impacts from climate change would likely raise the water table around the site, which is in the 100-year flood plain of the San Lorenzo River. While a levee system now protects the project site and the rest of downtown, the combination of risks that includes sea level rise, elevated water tables, higher seasonal king tides, more intense storms, and reliance on levees to protect dense development located on a flood plain calls for a thorough risk assessment in the EIR. This is especially relevant considering that the project would require significant excavation for foundation piles and an underground parking garage. The NOP mentions a possible risk mitigation measure of relying on existing infrastructure to pump out flood water but this mitigation factor requires uninterrupted electric power and assumes no significant rain event within 10 hours of a flood. With more intense coastal storms predicted to occur with the further

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onset of climate change, these assumptions may be optimistic, and thus, unduly expose the project to avoidable hazards. Finally, the NOP mentions a potential mitigation involving raising the elevation of levees to address flooding issues; however, this would require major federal funding that would alter the project's major public accessway to the Riverfront. The EIR should therefore thoroughly evaluate all of these issues, including alternatives that avoid such flooding impacts, as well as mitigation measures that would minimize such impacts.

Other Issues

We concur with the City that the subareas of Cultural Heritage and Energy warrant further review in the forthcoming EIR. Preserving historic buildings in the coastal zone that have significant cultural value and form part of a community's overall heritage is an important element of preserving coastal resources. Commission staff also shares the City's concern regarding the development's energy use and conservation of energy resources, especially related to how the project will generate its own renewable energy and affect the region's overall energy use and carbon emissions.

Thank you for considering these comments as you plan the scope of the Riverfront project EIR. Please do not hesitate to contact me at the address or phone number above if you wish to discuss any of the above comments.

Sincerely,

Colin Bowser
Coastal Planner
Central Coast District Office