

Civil No. H047705

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

WILLIAM HOBBS, et al.
Plaintiffs and Appellants

vs.

CITY OF PACIFIC GROVE, et al.
Defendants and Respondents;

MOTION FOR JUDICIAL NOTICE IN SUPPORT OF CITY OF
PACIFIC GROVE'S COMBINED RESPONDENTS' AND CROSS-
APPELLANTS' OPENING BRIEF

ON APPEAL FROM
THE SUPERIOR COURT OF MONTEREY COUNTY,
CASE NO. 18CV002411

*DAVID C. LAREDO, BAR NO. 66532
HEIDI A. QUINN, BAR NO. 180880
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Attorneys for Defendants and Respondents
City of Pacific Grove et al.

**To the Honorable Presiding Justice and Associate Justices
of the Sixth District Court of Appeal:**

Pursuant to California Rules of Court, rule 8.252, and Evidence Code sections 452, subsections (b) and (c), and 459, Respondents and Cross-Appellants City of Pacific Grove, Pacific Grove Mayor Bill Kampe, and Pacific Grove City Councilmembers Robert Huitt, Ken Cuneo, Rudy Fischer, Cynthia Garfield, Bill Peake, and Nick Smith (collectively, City) hereby move this Court to take judicial notice of the following documents attached as Exhibits A through C to the Declaration of David C. Laredo, filed concurrently herewith:

- A. The March 11, 2020, minutes of the California Coastal Commission's meeting certifying the City's Local Coastal Program, including the Implementation Plan and Land Use Plan, as modified; and
- B. The City's certified Implementation Plan codified in Pacific Grove Municipal Code section 23.90.220(c)(8); and
- C. A Grant Deed for the Sale for Appellants William and Susan Hobbs' property located at 1135 Ocean View, Pacific Grove, California 93950.

This City's certified Implementation Plan is relevant to this appeal because it supports the City's argument that Ordinance 18-005 is consistent with the Coastal Act, Coastal Act policies, and the City's Local Coastal Program, such that Appellants' challenge is moot. The City did not present the Certified Local

Coastal Program to the trial court because the Coastal Commission did not certify it until after the trial court ruled.

The Grant Deed for the Sale for Appellants Hobbs' property is relevant to this appeal because it supports the City's argument that the Hobbs lack standing to challenge Measure M, which regulates Short-Term Rentals in residential areas of the City outside the coastal zone. Appellants' challenge is moot because the Hobbs no longer own the property and are not an "aggrieved" party for purposes of appeal. The City did not present the Grant Deed to the trial court because the Hobbs sold their property sale on May 25, 2021 – after the trial court's ruling.

This Motion is based on the attached Memorandum, which contains information required by California Rules of Court, rule 8.252; true and correct copies of Exhibits A, B and C attached below to the Declaration of David C. Laredo; the records and files of this Court; the accompanying proposed order granting this Motion; and any further argument from the City the Court may request.

Dated: June 14, 2020

Respectfully submitted,

De Lay & Laredo

By: /s/ David C. Laredo
David C. Laredo, Attorneys
for Defendants and
Respondents City of Pacific
Grove et al.

MEMORANDUM

I. GENERAL PRINCIPLES OF JUDICIAL NOTICE

This Court has the same power as the trial court in deciding the propriety of taking judicial notice. (*Ragland v. U.S. Bank Nat'l Ass'n* (2012) 209 Cal.App.4th 182, 193.) An appellate court may judicially notice documents under Evidence Code section 459. (*Id.* at p. 183.) This Court may also take judicial notice of any materials that are specified in Evidence Code section 452 and relevant to the dispositive questions before the Court. (Evid. Code, § 459; *Hughes Electronics Corp. v. Citibank Delaware* (2004) 120 Cal.App.4th 251, 266, fn. 13.) The materials specified in Evidence Code section 452 include “regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.” (Evid. Code, § 452, subd. (b).) They also include “official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” (*Id.*, subd. (c).)

II. THE EXHIBITS ARE NOTICABLE AND RELEVANT

This Court may judicially notice documents in Exhibit A under Evidence Code section 452, subdivision (c) because the Coastal Commission’s certification of the City’s Local Coastal Program, including the Implementation Plan, is an official act of the California Coastal Commission. (See *Self v. Cher-Ae Heights Indian Community of Trinidad Rancheria* (2021) 60 Cal.App.5th 209, 213, fn. 1 [taking judicial notice of Coastal Commission letters and staff report regarding Coastal Act consistency

determination], citing Evid. Code, § 452, subd. (c) & *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1225, fn. 6.)

This Court may judicially notice the document in Exhibit B under Evidence Code sections 452, subdivision (b), and 459 because the Implementation Plan of the City's Certified Local Coastal Program, codified in Pacific Grove Municipal Code Section 23.90.220, is an official legislative enactment of the City, a public entity in the United States. (Evid. Code, § 452, subd. (b); *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1077, fn. 5 [taking notice of city ordinances]; *Madain v. City of Stanton* (2010) 185 Cal.App.4th 1277, 1280, fn. 1 [taking notice of municipal code provisions]; *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 420, fn. 1 [taking notice of municipal code sections and specific plan].)

The Court may judicially notice documents in Exhibit C under Evidence Code section 452, subdivision (c) because the recording of the Grant Deed is an official act of the Monterey County Recorder's office. (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 924 & fn. 1 [taking judicial notice of deed of trust, assignment of deed of trust, notice of default, notice of sale, and trustee's deed upon sale].)

As explained in the Notice, above, the documents provided to this Court are all relevant to demonstrate Appellants cannot prevail on their appeal and are therefore proper subjects of judicial notice. (See *Trinity Park, L.P. V. City of Sunnyvale* (2011) 193 Cal.App.4th 1014, 1027 [court may judicially notice local

ordinances and resolutions], disapproved on unrelated grounds in *Sterling Park, L.P. V. City of Palo Alto* (2013) 57 cal.4th 1193, 1210.) Exhibits A and B demonstrate that Appellants' Coastal Act claim is now moot because the Coastal Commission has approved the City's Short-Term Rental regulations in the coastal zone. Finally, Exhibit C demonstrates Appellants no longer have standing to challenge Measure M because the Hobbs no longer own property affected by that measure.

III. CONCLUSION

For the foregoing reasons, the City respectfully requests the Court take judicial notice of Exhibits A, B and C to the Declaration of David C. Laredo, submitted in support of its Combined Brief.

Dated: June 14, 2020

Respectfully submitted,

De Lay & Laredo

By /s/ David C. Laredo

David C. Laredo
Attorneys for Defendants and
Respondents City of Pacific
Grove et al.

**DECLARATION OF DAVID C. LAREDO
(Cal. Rules of Court, rule 8.54(a)(2))**

1. I am an attorney licensed to practice law in the State of California and before this Court. I am an attorney with the law firm of De Lay & Laredo and serve as City Attorney to the City of Pacific Grove (City). I am the attorney of record for the City in this matter. Unless otherwise noted, I have personal knowledge of the matters set forth herein and, if called upon as a witness, I could testify competently thereto.

2. Attached as Exhibit A is a true and correct copy of the minutes of the March 11, 2020, California Coastal Commission meeting certifying the City's Local Coastal Program, including the Implementation Plan and Land Use Plan, as modified. I obtained this copy from the website for the California Coastal Commission on June 11, 2021.

3. Attached as Exhibit B is a true and correct copy of the City's "Implementation Plan," codified at Pacific Grove Municipal Code Section 23.90.022. I obtained this copy from the City website on June 11, 2021.

4. Attached as Exhibit C is a true and correct copy of a document titled "Grant Deed" for 1135 Ocean View Boulevard, Pacific Grove, California 93950. I was provided this copy from the Monterey County Recorder's Office.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 14, 2021, at Pacific Grove, California.

/s/ *David C. Laredo*

David C. Laredo
Attorney for Defendants and
Respondents City of Pacific
Grove et al.

**[PROPOSED]
ORDER TAKING JUDICIAL NOTICE**

Good cause appearing, IT IS HEREBY ORDERED that Respondents' and Cross-Appellants' City of Pacific Grove's Motion for Judicial Notice in Support of City's Brief is GRANTED.

IT IS ORDERED that this Court shall take judicial notice of the following:

- A. The March 11, 2020, minutes of the California Coastal Commission's meeting certifying the City's Local Coastal Program, including the Implementation Plan and Land Use Plan, as modified; and
- B. The City's Certified Implementation Plan codified in Pacific Grove Municipal Code section 23.90.220(c)(8); and
- C. A Grant Deed for the Sale for Appellants William and Susan Hobbs' property located at 1135 Ocean View, Pacific Grove, California 93950.

Date: _____

Presiding Justice

EXHIBIT A

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
FAX (415) 904-5400
TDD (415) 597-5885

**W21**

DATE: June 24, 2020
TO: Coastal Commissioners
FROM: John Ainsworth, Executive Director
SUBJECT: **DRAFT MINUTES** of MEETING of March 11-13, 2020
Hilton Scotts Valley
6001 La Madrona Drive
Santa Cruz, CA 95060

WEDNESDAY, MARCH 11, 2020

1. **CALL TO ORDER.** The meeting of the California Coastal Commission was called to order at 9:00 a.m. by Chair Padilla.
2. **ROLL CALL.** Present: Chair Padilla, Aminzadeh, Bochco, Luce(alt), Groom, Hart, Howell, Rice, Mann(alt), Uranga, Wilson. Absent: Brownsey. Non-voting present: Ketchum, Wong-Hernandez.
3. **AGENDA CHANGES.** Staff reported changes to the day's agenda.
4. **GENERAL PUBLIC COMMENT.** Members of the public addressed the Commission on various issues affecting the coast.
5. **Chair's Report.** None.

STATEWIDE

6. **Informational Briefing on Marine Mammal Research.** No action taken.
7. **EXECUTIVE DIRECTOR'S REPORT.**
 - a. **Executive Director's Report.** Information only.
 - b. **Commission Correspondence.** None.
 - c. **Legislative Report.** Information only.
 - d. **California Coastal Commission Public Review Draft Five-Year Strategic Plan (2020-2025).** Discussion only. No action taken.
 - e. **Informational Report on 1982 Hollister Ranch Public Access Program.**
 - f. **Interagency Agreement.** [POSTPONED]

NORTH COAST DISTRICT

8. **DEPUTY DIRECTOR'S REPORT.** Report by Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, and on comments from the public relating to the Deputy Director's report. There being no objection, Chair Padilla ruled that the Commission concurred.
9. **LOCAL COASTAL PROGRAMS. (LCPs).**
 - a. **County of Humboldt LCP Amendment Application No. LCP-1-HUM-16-0075-2 Part A (Cannabis-Personal Use Cultivation) Certification Review.** Moved by staff to the expanded consent calendar. **Concurred.**
 - b. **County of Humboldt LCP Amendment Application No. LCP-1-HUM-16-0075-2 Part B (Cannabis Dispensaries) Certification Review.** Moved by staff to the expanded consent calendar. **Concurred.**
10. **CONSENT CALENDAR (removed from Regular Calendar).** Staff moved 3 items [9a, 9b, 11a] to the expanded consent calendar and recommended approval with conditions.
Motion & vote: Wilson moved to approve the consent calendar pursuant to the staff recommendation and recommended a yes vote, seconded by Uranga. Chair Padilla ruled that the vote was unanimous in favor of the motion. **Approved.**
11. **PERMIT AMENDMENTS.**
 - a. **Permit No. 1-15-0205-A2 (Rock & Dwelley, Humboldt Co.)** Moved by staff to the expanded consent calendar. **Approved with conditions.**

ENERGY, OCEAN RESOURCES and FEDERAL CONSISTENCY

12. **ENERGY, OCEAN RESOURCES and FEDERAL CONSISTENCY.** Report by the Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, negative determinations, matters not requiring public hearings, and status report on offshore oil & gas exploration & development. There being no objection, Chair Padilla ruled that the Commission concurred.
13. **CONSENT CALENDAR (removed from Regular Calendar).** None.
14. **COASTAL PERMIT APPLICATIONS.**
 - a. **Application No. 9-19-1250 (City of Santa Barbara Desalination Facility Improvements) [POSTPONED]**

NORTH CENTRAL COAST DISTRICT

15. **DEPUTY DIRECTOR'S REPORT.** Report by Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, and on comments from the public relating to the Deputy Director's report. There being no objection, Chair Padilla ruled that the Commission concurred.
16. **CONSENT CALENDAR (removed from Regular Calendar)** . None.
17. **COASTAL PERMIT APPLICATIONS.**

[Howell out of room]

- a. **Application No. 2-19-0586 (Pacifica State Beach Parking Fee Program, Pacifica)** Staff recommended approval with conditions and incorporated into its recommendation expanded eligibility criteria for low income passes and streamlining the procurement process for such passes.

Motion: Bochco moved to approve pursuant to the staff recommendation and recommended a yes vote, seconded by Rice.

Amending motion & vote: Hart moved to reduce the parking fee to five dollars (\$5) and recommended a yes vote, seconded by Wilson. The roll call vote was 5 in favor (Aminzadeh, Luce, Hart, Mann, Wilson) and 5 opposed (Bochco, Groom, Rice, Uranga, Padilla). **Failed**

Vote on main motion: The roll call vote was 10 in favor (Bochco, Luce, Groom, Hart, Rice, Mann, Uranga Wilson, Aminzadeh, Padilla) and none opposed.

Approved with conditions.

- b. **Application No. 2-17-0438 (AMJT Capital and BCPUD, Bolinas, Marin Co.)**
[POSTPONED]

CENTRAL COAST DISTRICT

18. **DEPUTY DIRECTOR'S REPORT.** Report by Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, and on comments from the public relating to the Deputy Director's report. There being no objection, Chair Padilla ruled that the Commission concurred.
19. **CONSENT CALENDAR (removed from Regular Calendar)** . Staff moved 3 items [20a, 20b, 22a] to the expanded consent calendar and recommended approval with conditions.

Motion & vote: Groom moved to approve the consent calendar pursuant to the staff recommendation and recommended a yes vote, seconded by Wilson. Chair Padilla ruled that the vote was unanimous in favor of the motion. **Approved.**

20. **LOCAL COASTAL PROGRAMS. (LCPs).**

- a. **Santa Cruz County LCP Amendment No. 3-SCO-19-0148-2-Part A (Permanent Room Housing). Certification Review.** Moved by staff to the expanded consent calendar. **Concurred.**

- b. **City of Pismo Beach LCP Amendment No. LCP-3-PSB-19-0152-2 (Personal Services)** Moved by staff to the expanded consent calendar . **Approved as submitted.**

[Howell returned]

- c. **City of Pacific Grove LCP Certification No. LCP-PGR-18-0093-1 (LUP Update and IP Certification. Certification Review.** Staff recommended concurrence with the Executive Director's determination that action by the City of Pacific Grove accepting the Commission's certification with suggested modifications is legally adequate. There being no objection, Chair Padilla ruled that the Commission concurred.

21. **POST LCP JURISDICTION MAP.**

- a. **City of Pacific Grove Post LCP Certification Permit and Appeal Jurisdiction Map.** Staff recommended approval.

Motion & vote: Hart moved to approve the Post LCP Certification Permit and Appeal Jurisdiction Map and recommended a yes vote, seconded by Wilson. Chair Padilla ruled that the vote was unanimous in favor of the motion. **Approved.**

22. **COASTAL PERMIT APPLICATIONS.**

- a. **Application No. 3-18-1230 (Port San Luis Repair and Maintenance, Avila Beach, San Luis Obispo Co.)** Moved by staff to the expanded consent calendar. **Approved with conditions.**

[Aminzadeh out of room]

- b. **Application No. 3-20-0014 (Soquel Creek Water District Pure Water Project, Santa Cruz, Capitola and Santa Cruz Co.)** Staff recommended approval with conditions.

Motion & vote: Howell moved to approve pursuant to the staff recommendation and recommended a yes vote, seconded by Bochco. Chair Padilla ruled that the vote was unanimous in favor of the motion. **Approved with conditions.**

- c. **Application No. 3-20-0088 (City of Santa Cruz Beach Management Plan, Santa Cruz)** Staff recommended approval with conditions.

Motion & vote: Hart moved to approve pursuant to the staff recommendation and recommended a yes vote, seconded by Bochco. The roll call vote was 7 in favor (Luce,Groom, Hart, Rice, Aminzadeh, Bochco, Padilla) and 4 opposed (Howell, Mann, Uranga, Wilson). Chair Padilla ruled that the vote was unanimous in favor of the motion. **Approved with conditions.**

[Aminzadeh returned]

23. PERMIT AMENDMENTS.

- a. **Permit No. 140-32-A1 (Bell, Los Osos, San Luis Obispo Co.)** Staff recommended approval with conditions.

Motion: Howell moved to approve pursuant to the staff recommendation and recommended a yes vote, seconded by Bochco.

Amending motion and vote: Howell moved to approve Permit No. 140-32-A1 without the modifications recommended by staff and recommended a yes vote, seconded by Bochco. Chair Padilla ruled that the vote was unanimous in favor of the motion. **Passed.**

Vote on main motion as amended: Chair Padilla ruled that the vote was unanimous in favor of the motion. **Approved with conditions.**

- b. **Permit No 3-82-199-A8 (Carmel Area Wastewater District Wastewater Treatment Plant Upgrades, Carmel, Monterey Co.)** Staff recommended approval with conditions.

Motion & vote: Wilson moved to approve pursuant to the staff recommendation and recommended a yes vote, seconded by Howell. Chair Padilla ruled that the vote was unanimous in favor of the motion. **Approved with conditions.**

STATEWIDE

22. **APPROVAL OF MINUTES.** None.
23. **COMMISSIONERS' REPORTS.** Information only.
24. **CONSERVANCY REPORT.** Information only.
25. **SANTA MONICA MOUNTAINS CONSERVANCY REPORT.** None.
26. **SANTA MONICA BAY RESTORATION REPORT.** None.
27. **DEPUTY ATTORNEY GENERAL'S REPORT.** Information only.

The Commission recessed for the day at 6:45p.m.

THURSDAY, MARCH 12, 2020

1. **CALL TO ORDER.** The meeting of the California Coastal Commission was called to order at 9:00 a.m. by Chair Padilla
2. **ROLL CALL.** Present: Chair Padilla, Aminzadeh, Bochco, Luce(alt), Groom, Howell, Rice, Mann, Uranga, Wilson. Absent: Brownsey, Hart. Non-voting present: Ketchum, Wong-Hernandez.
3. **AGENDA CHANGES.** Staff reported changes to the day's agenda.
4. **GENERAL PUBLIC COMMENT.** Members of the public addressed the Commission on various issues affecting the coast.

ENFORCEMENT

5. **ENFORCEMENT REPORT.** None.

SOUTH COAST DISTRICT (Orange County)

6. **ADMINISTRATIVE CALENDAR.** Staff recommended that the Commission concur with the Executive Director's determination. There being no objection, Chair Padilla ruled that the Commission concurred.
 - a. **Application No. 5-18-1059 (Ramelot, Huntington Beach)**
 - b. **Application No. 5-19-0133 (Patterson Custom Homes, Newport Beach)**
 - c. **Application No. 5-19-0923 (Bradley B. LLC, Huntington Beach)**
7. **CONSENT CALENDAR.**
 - a. **Application No. 5-19-0366 (Smallwood and Pennington, Seal Beach)**

Motion & vote: Wilson moved to approve the consent calendar pursuant to the staff recommendation and recommended a yes vote, seconded by Groom. Chair Padilla ruled that the vote was unanimous in favor of the motion. **Approved.**

SOUTH COAST DISTRICT (Orange County)

8. **DEPUTY DIRECTOR'S REPORT.** Report by Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, and on comments from the public relating to the Deputy Director's report. There being no objection, Chair Padilla ruled that the Commission concurred.
9. **CONSENT CALENDAR (removed from Regular Calendar).** Staff moved one item [12c] to the expanded consent calendar and recommended approval with conditions.

Motion & vote: Wilson moved to approve the consent calendar pursuant to the staff recommendation and recommended a yes vote, seconded by Uranga. Chair Padilla ruled that the vote was unanimous in favor of the motion. **Approved.**

10. **LOCAL COASTAL PROGRAMS (LCPs).**

- a. **County of Laguna Beach LCP Amendment No. 4-19 (LCP-5-LGB-20-0004-3) [POSTPONED].**

11. **NEW APPEALS.**

- a. **Appeal No. A-5-LGB-18-0056 (Miura, Laguna Beach) [POSTPONED]**
- b. **Appeal No. A-5-LGB-20-0001, City of Laguna Beach Parking Program) [POSTPONED]**
- c. **Appeal No. A-5-LGB-20-0002 (Schiffman Living Trust, Laguna Beach)** Staff recommended that the Commission determine that Appeal No. A-5-LGB-20-0002 raised a substantial issue on the grounds on which the appeal was filed. There being no objection, Chair Padilla ruled that the Commission **found substantial issue** and **continued** the denovo hearing.
- d. **Appeal No. A-5-LGB-20-0003 (Dekovner, Laguna Beach)** Staff recommended that the Commission determine that Appeal No. A-5-LGB-20-0003 raised substantial issue on the grounds on which the appeal was filed. There being no objection, Chair Padilla ruled that the Commission **found substantial issue** and **continued** the denovo hearing.
- e. **Appeal No. A-5-LGB-20-0005 (Table Rock Association, Laguna Beach)** Staff recommended that the Commission determine that Appeal No. A-5-LGB-20-0005 raised substantial issue on the grounds on which the appeal was filed. There being no objection, Chair Padilla ruled that the Commission **found substantial issue** and **continued** the denovo hearing.

12. **COASTAL PERMIT APPLICATIONS.**

- a. **Application No. 5-17-0465 (City of Newport Beach Western Snowy Plover Habitat Plan for East Balboa Beaches, Newport Beach) [WITHDRAWN]**
- b. **Application No. 5-19-0196 (Savage, San Clemente)** Staff recommended approval in part and denial in part.

Motion & vote: Groom moved to approve in part and deny in part pursuant to the staff recommendation and recommended a yes vote, seconded by Bochco. Chair Padilla ruled that the vote was unanimous in favor of the motion. **Approved in part and denied in part.**

- c. **Application No. 5-19-0689 (Wong, Newport Beach)** Moved by staff to the expanded consent calendar. **Approved with conditions.**
- d. **Application No. 5-19-0907 (Palmo Investments, Newport Beach) [POSTPONED]**

- e. **Application No. 5-19-0997 (Hometown America, LLC, Laguna Beach)** Staff recommended approval with conditions.

Motion & vote: Rice moved to approve pursuant to the staff recommendation and recommended a yes vote, seconded by Wilson. Chair Padilla ruled that the vote was unanimous in favor of the motion. **Approved with conditions.**

13. PERMIT AMENDMENTS.

SAN DIEGO COAST DISTRICT

- 14. **DEPUTY DIRECTOR'S REPORT.** Report by Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, and on comments from the public relating to the Deputy Director's report. There being no objection, Chair Padilla ruled that the Commission concurred.
- 15. **CONSENT CALENDAR (removed from Regular Calendar)** Staff moved 6 items [16a, 16b, 16c, 16d, 16e, 16f] to the expanded consent calendar and recommended approval with conditions.

Motion & vote: Wilson moved to approve the consent calendar pursuant to the staff recommendation and recommended a yes vote, seconded by Groom. Chair Padilla ruled that the vote was unanimous in favor of the motion. **Approved with conditions.**

16. LOCAL COASTAL PROGRAMS (LCPs).

- a. **City of Encinitas LCP Amendment No. LCP-6-ENC-19-0160-3 (Specialized Housing, Reasonable Accommodations, Single Room Occupancy).** Moved by staff to the expanded consent calendar. **Approved as submitted.**
- b. **City of San Diego LCP Amendment No. LCP-6-SAN-19-0141-2 (Civic San Diego Dissolution)** Moved by staff to the expanded consent calendar. **Approved with suggested modifications.**
- c. **City of San Diego LCP Amendment No. LCP-6-SAN-19-0142-2 (Fiesta Island) Time Extension.** Moved by staff to the expanded consent calendar. **Approved.**
- d. **City of San Diego LCP Amendment No LCP-6-SAN-19-0161-3 (Mission Valley Rezone) Time Extension.** Moved by staff to the expanded consent calendar. **Approved.**
- e. **City of San Diego LCP Amendment No. LCP-6-SAN-19-0163-3 (Mixed Use Zones)** Moved by staff to the expanded consent calendar. **Approved as submitted.**
- f. **City of San Diego LCP Amendment No. LCP-6-SAN-19-0165-3 (Balboa Avenue Station Specific Plan) Time Extension.** Moved by staff to the expanded consent calendar. **Approved.**

The Commission recessed the meeting at 11:15 a.m. and went into closed session.

Report of Closed Session.

The Commission received litigation information and advice on the following cases:

Aqualegacy Development LLC v. CCC, et al.
Citizens for South Bay Coastal Access v. CCC
Dunes Development, LLC v. CCC
Friends, Artists, & Neighbors of Elkhorn Slough, et al. v. CCC, et al.
Friends of Oceano Dunes, Inc. v. CCC
Pappas, et al. v. State Coastal Conservancy, et al. (Rancho Cuarta, RPI) ,
Rudisill v. CCC (Pied a Terre)
Spotlight on Coastal Corruption v. CCC, et al. ,
Spotlight on Coastal Corruption v. Kinsey, et al. ,
Stanger v. CCC

The Commission received litigation information and advice and provided direction on the following cases:

Friends of Oceano Dunes, Inc. v. CCC
McCarthy, et al. v. CCC

[Commissioner Howell recused himself from the discussion of Spotlight on Coastal Corruption v. CCC, et al. and Spotlight on Coastal Corruption v. Kinsey, et al.]

FRIDAY, MARCH 13, 2020

1. **CALL TO ORDER.** The meeting of the California Coastal Commission was called to order at 9:00 a.m. by Commissioner Bochco.
2. **ROLL CALL.** Present: Bochco (acting Chair), Aminzadeh, Luce(alt), Groom, Rice, Mann(alt), Uranga, Wilson. Absent: Chair Padilla, Vice Chair Brownsey, Hart, Howell. Non-voting: Ketchum, Wong-Hernandez.
3. **AGENDA CHANGES.**
4. **GENERAL PUBLIC COMMENT.** Members of the public addressed the Commission on various issues affecting the coast.

SOUTH COAST DISTRICT (Los Angeles County)

5. **ADMINISTRATIVE CALENDAR.** Staff recommended that the Commission concur with the Executive Director's determination. There being no objection, Chair Bochco ruled that the Commission concurred.
 - a. **Application No. 5-19-1323 (Stein, Venice, Los Angeles)**
6. **CONSENT CALENDAR.** Staff recommended approval of the consent calendar.
 - a. **Application No. 5-19-0096 (Doyle, Los Angeles) [POSTPONED]**
 - b. **Application No. 5-19-1012 (MdR Beach Rental LLC, Venice, Los Angeles) [POSTPONED]**

SOUTH CENTRAL COAST DISTRICT

7. **DEPUTY DIRECTOR'S REPORT.** Report by Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, and on comments from the public relating to the Deputy Director's report. There being no objection, Chair Bochco ruled that the Commission concurred.

[Mann out of room]

8. **CONSENT CALENDAR (removed from Regular Calendar).** Staff moved three items [9a, 9b, 9c] to the expanded consent calendar and recommended approval with conditions.

Motion & vote: Wilson moved to approve the consent calendar pursuant to the staff recommendation and recommended a yes vote, seconded by Rice. Chair Bochco ruled that the vote was unanimous in favor of the motion. **Approved with conditions.**

9. **LOCAL COASTAL PROGRAMS (LCPs).**

- a. **City of Malibu Minor LCP Amendment No. LCP-4-MAL-19-0162-2 (Public Improvements on Public Sandy Beach).** Moved by staff to the expanded consent calendar. **Concurred.**
- b. **County of Santa Barbara LCP Amendment No. LCP-4-STB-19-0157-1 (2019 General Package) Time Extension.** Moved by staff to the expanded consent calendar. **Approved.**
- c. **City of Oxnard LCP Amendment No. LCP-4-OXN-20-0008-1 (Short Term Rentals) Time Extension.** Moved by staff to the expanded consent calendar. **Approved.**

SOUTH COAST DISTRICT (Los Angeles County)

[Mann returned; Aminzadeh out of room]

- 10. **DEPUTY DIRECTOR'S REPORT.** Report by Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, and on comments from the public relating to the Deputy Director's report. There being no objection, Chair Bochco ruled that the Commission concurred.
- 11. **CONSENT CALENDAR (removed from Regular Calendar).** Staff moved 5 items [12a, 12b, 14a, 14b, 14c] to the expanded consent calendar and recommended approval with conditions.

Motion & vote: Wilson moved to approve the consent calendar pursuant to the staff recommendation and recommended a yes vote, seconded by Uranga. Chair Bpchco ruled that the vote was unanimous in favor of the motion. **Approved.**

12. **LOCAL COASTAL PROGRAMS (LCPs).**

- a. **City of Long Beach LCP Amendment No. 2-19 (LCP-5-LOB-19-0167-2 Time Extension).** Moved by staff to the expanded consent calendar. **Approved.**
- b. **City of Long Beach LCP Amendment No. 3-19 (LCP-5-LOB-19-0168-3 Time Extension).** Moved by staff to the expanded consent calendar. **Approved**

13. **NEW APPEALS.**

- a. **Appeal No. A-5-LOB-20-0006 (Panattoni Development Company, Inc., Long Beach)** Staff recommended that the Commission determine that Appeal No. A-5-LOB-20-0006 raised a substantial issue on the grounds on which the appeal was filed. There being no objection, Chair Bochco ruled that the Commission **found substantial issue** and **continued** the denovo hearing.

14. **COASTAL PERMIT APPLICATIONS.**

- a. **Application No. 5-14-1756- A2 (Ghandour, Santa Monica)** Moved by staff to the expanded consent calendar. **Approved with conditions.**
- b. **Application No. 5-18-1153 (Katnik, Torrance)** Moved by staff to the expanded consent calendar. **Approved with conditions.**
- c. **Application No. 5-19-0378 (Eckenhansen, Long Beach)** Moved by staff to the expanded consent calendar. **Approved with conditions.**
- d. **Application No. 5-19-0854 (Eaton, Venice, Los Angeles)** **[POSTPONED]**
- e. **Application No. 5-19-0955 (Lesman, Hermosa Beach)** **[POSTPONED]**

There being no old or new business, the meeting of the California Coastal Commission adjourned at 10:15a.m.

Respectfully submitted,

John Ainsworth
Executive Director

Approved as
Submitted _____

Steve Padilla
Chair

EXHIBIT B

Chapter 23.90

LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN

Sections:

- 23.90.010 Purpose and general provisions of the coastal implementation plan.**
- 23.90.020 Definitions.**
- 23.90.030 Coastal development permit processing procedures.**
- 23.90.040 CDP exemptions.**
- 23.90.045 Waivers of de minimis development.**
- 23.90.050 City CDP determinations.**
- 23.90.060 CDP application submittal.**
- 23.90.070 CDP application public notice and hearing.**
- 23.90.080 Required findings for CDP approval.**
- 23.90.090 Notices of city's final action on CDPs.**
- 23.90.100 Appeals of CDP decisions.**
- 23.90.110 Coastal development permits (CDP).**
- 23.90.120 Emergency CDPs.**
- 23.90.130 Coastal resource protection standards.**
- 23.90.140 Coastal hazards.**
- 23.90.150 Water quality and marine resources.**
- 23.90.160 Scenic resources.**
- 23.90.170 Biological resources and/or environmentally sensitive habitat areas.**
- 23.90.180 Coastal community design.**

23.90.200 Cultural resources.

23.90.210 Public infrastructure.

23.90.220 Parks, recreation, and public access.

23.90.010 Purpose and general provisions of the implementation plan.

(a) Purpose. The purpose of this chapter is to implement the city of Pacific Grove local coastal program (LCP) land use plan (LUP), in accordance with the requirements of the California Coastal Act of 1976.

(b) Applicability. The regulations found in this chapter shall apply to all areas of the city of Pacific Grove located within the coastal zone as established by the state legislature.

(c) Local Coastal Program Implementation Plan. This chapter is the city of Pacific Grove LCP implementation plan (IP), serving to carry out the policies of the LCP LUP, including providing the requirements for issuance of coastal development permits (CDPs). This chapter is a component of the city of Pacific Grove LCP. In case of conflict with any other applicable non-LCP city policies or regulations, the IP and LUP shall take precedence, with the LUP taking precedence if there are conflicts between the LUP and the IP. Where the IP and LUP are silent, other city policies and regulations shall be in force, but in no case shall such policies and regulations be used as a standard of review for CDPs.

(d) Agency Coordination. The city will work with other agencies as appropriate to implement the LCP.

(e) LCP Violations. The city is the primary enforcement entity for development within its jurisdiction and will investigate and prosecute development activity that occurs within the coastal zone without a coastal development permit pursuant to the requirements of this LCP and other violations of the Coastal Act. The city will work to resolve violations of this LCP in a timely manner, including through the use of appropriate enforcement actions. The city may request that the Coastal Commission assist with, or assume primary responsibility for, resolving violations of this LCP. The Commission may request that the city act to resolve violations of this LCP. However, if the city declines to act or does not act in a timely manner, the Coastal Commission may enforce the requirements of this LCP through its own enforcement actions pursuant to Coastal Act Sections 30809 and 30810.

(f) Severability. If any section, subsection, paragraph, sentence, clause, phrase, or other portion of this chapter is for any reason held to be invalid or unenforceable by a court, such decision shall not affect the validity of the remaining portions of the chapter.

(g) Jurisdiction. The city's jurisdiction over CDPs does not include tidelands, submerged lands, and public trust lands as described in Public Resources Code Section [30519\(b\)](#) and described as areas of California Coastal Commission CDP jurisdiction, including as illustrated on the local coastal program post-certification permit and jurisdiction map, as may from time to time be amended.

(h) Coastal Commission CDPs. The Coastal Commission retains authority over CDPs approved and/or issued by the Coastal Commission prior to certification of this LCP, including with respect to condition compliance and amendments. Where either new development or a modification to existing development is proposed on a site where development was authorized in a Coastal Commission-issued CDP, the applicant shall apply to the Coastal Commission for a CDP amendment, unless the Commission's executive director determines that such development or modification is not inconsistent with and will not change the relevant terms and conditions underlying the CDP, in which case the application can be processed by the city.

(i) Incomplete Applications at Certification. Any proposed development within the city's coastal zone that is subject to the city's jurisdiction upon certification of the LCP, but for which a complete CDP application has not been filed with the Coastal Commission prior to certification of the LCP, shall be submitted instead to the city through an application pursuant to the certified LCP. The standard for review for such an application shall be the requirements of the certified LCP. A refund of application fees paid to the Coastal Commission shall only be due if no significant staff review time has been expended on the original application.

(j) Complete Applications at Certification. Any proposed development within the city's coastal zone that is subject to the city's jurisdiction upon certification of the LCP for which a complete CDP application has been filed with the Coastal Commission prior to certification of the LCP may, at the option of the applicant, remain with the Coastal Commission for completion of review. Alternatively, the applicant may withdraw the application filed with the Coastal Commission and resubmit it to the city through an application pursuant to the requirements of the certified LCP. In either case, the standard of review for any such application shall be the LCP. A refund of application fees paid to the Coastal Commission for a withdrawn application shall only be due if no significant staff review time has been expended on the withdrawn application.

(k) Coastal Resource Protection. The LCP shall be interpreted to accomplish the purposes of and carry out the objectives of the California Coastal Act, including in terms of best protecting coastal resources. Site specific biological resources, archaeological, visual, geologic, water quality, coastal hazards, and other coastal resource protection constraints may limit development to less than the maximum development potential listed for the LCP's zoning districts.

(I) LCP. The city of Pacific Grove LCP is made up of its LUP and this IP. [Ord. 20-023 § 2, 2020].

23.90.020 Definitions.

The following terms are used in this implementation plan. See also the definitions listed in land use plan Section 1.10.

(a) A Definitions.

“Accessory structure” (“accessory building”) means structures that are customarily incidental to, related to and clearly subordinate to principal allowed uses and structures located on the same premises, such as parking facilities, restrooms, etc.

“Accessory use” means a use of land or building, or portion thereof, that is customarily incidental to, related to, and clearly subordinate to a primary use of the land or building located on the same premises.

(b) B Definitions.

“Best available science” refers to current, generally accepted, data-driven information, as refined to be most applicable to the local circumstances and conditions, and considering a range of plausible impacts based on multiple time scales, emissions scenarios, or other factors developed to inform further decision-making regarding the range of impacts and vulnerabilities.

(c) C Definitions.

“Coastal beach” (or “beach”) means the sandy area between the low tide and the first line of terrestrial vegetation or development or the toe of an adjacent coastal bluff or seawall, whichever is the most landward.

“Coastal bluff” (“bluff” or “cliff”) means a landform that includes a scarp or steep face of rock adjacent to the bay or ocean and meeting one of the following two parameters:

(1) The toe is now or was historically (generally within the last 200 years) subject to marine erosion.

(2) The toe of which lies within an area otherwise identified in Public Resources Code Section [30603\(a\)\(1\)](#) or (a)(2).

“Bluff line” or “edge” means the upper termination of a bluff, cliff, or sea cliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to

the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a step-like feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge. The termini of the bluff line, or edge along the seaward face of the bluff, shall be defined as a point reached by bisecting the angle formed by a line coinciding with the general trend of the bluff line along the seaward face of the bluff, and a line coinciding with the general trend of the bluff line along the inland facing portion of the bluff. Five hundred feet shall be the minimum length of bluff line or edge to be used in making these determinations.

“Coastal-related use” or “coastal-related development” refers to any use that is dependent on a coastal-dependent development or use.

(d) D Definitions.

“Director” refers to the city of Pacific Grove community and economic development director and his or her designee.

(e) Reserved.

(f) F Definitions.

“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

“Fill” means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed on land or in a submerged area.

“First public road paralleling the sea” means that road nearest to the sea, as defined in Section [30115](#) of the Public Resources Code, which:

- (1) Is lawfully open to uninterrupted public use and is suitable for such use;
- (2) Is publicly maintained;
- (3) Is an improved, all-weather road open to motor vehicle traffic in at least one direction;
- (4) Is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and

(5) Does in fact connect with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

“Flood” (or “flooding”) refers to normally dry land becoming temporarily covered in water, either periodically (e.g., tidal flooding) or episodically (e.g., storm or tsunami flooding), including in relation to sea level rise.

(g) Reserved.

(h) H Definitions.

“Height” means the vertical distance measured between legally established existing grade and the top-most portion of development above existing grade, unless otherwise specified.

“Historic resource” means any object, building, structure, site, area or place which is at least 50 years old and is historically or archaeologically significant, or which is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural history of the city of Pacific Grove and/or California and/or the United States.

(i) Reserved.

(j) Reserved.

(k) Reserved.

(l) L Definitions.

“Lodging” includes the following:

(1) “Vacation rental” or “short-term rental” mean the use of a residential structure or a portion of a residential structure for short-term transient use where food is not provided.

(2) “Bed and breakfast inn” means the use of a residential property for commercial lodging purposes where there are at least eight rooms available to guests and where the principal buildings were constructed at least 75 years prior to the date of application for the use.

(3) “Hotel” means the use of a commercial structure for commercial lodging purposes which is occupied or intended or designed for occupancy for short-term, temporary or impermanent

lodging or sleeping purposes, where food, parking, or other amenities customarily associated with hotels are provided, and where most rooms are accessed from within the hotel and not from separate entrances.

(4) "Motel" means the use of a commercial structure or group of structures on the same parcel for commercial lodging purposes which is occupied or intended or designed for occupancy for short-term, temporary or impermanent lodging or sleeping purposes, where food, parking, or other amenities customarily associated with motels are provided, and where most rooms are accessed from individual entrances from the outside.

(5) "Automobile court, cottage court, or motor lodge" means a motel that is used primarily for the accommodation of transient automobile travelers for which enhanced automobile facilities are included.

"Lot width" means that dimension of a lot which fronts on a street. In the case of frontage on more than one street, it refers to the lesser of the two dimensions.

(m) Reserved.

(n) Reserved.

(o) Reserved.

(p) P Definitions.

"Person" means any individual, organization, partnership, limited liability company, or other business association or corporation, including any utility, and any federal, state, local government, or special district or any agency thereof.

"Plate line" means the top of the highest horizontal framing member or solid wall of a building or structure or part thereof, upon which roof beams or ceiling rafters rest. Features excluded from measurement under this definition shall include gable ends, sloping roofs, parapet walls and other vertical extensions which are normally controlled by limits on roof height as set forth in this section.

(q) Reserved.

(r) R Definitions.

"Revetment" is a type of shoreline protective device typically consisting of a sloped retaining wall; a facing of stone, concrete, blocks, rip-rap, etc., built to protect an embankment, bluff or development

against erosion by wave action and currents.

“Reviewing authority” means the authority with the responsibility to review, approve, or deny coastal development permits (i.e., the city planning commission, the city council, or the Coastal Commission).

“Riprap” means a type of shoreline protective device consisting of a protective layer or facing of rock, concrete blocks or quarry stone, placed to prevent erosion, scour, or sloughing of an embankment or bluff or to protect development.

(s) S Definitions.

“Sea” means the Pacific Ocean and all harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean, excluding nonestuarine rivers, streams, tributaries, creeks, and flood control and drainage channels.

“Structure” means any development constructed or erected with a fixed location on or in the ground, or attached to something with a fixed location on or in the ground. “Structure” includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

“Submerged lands” means lands which lie below the line of mean low tide.

(t) Reserved.

(u) Reserved.

(v) V Definitions.

“Vernal pools” are seasonal depressional wetlands that occur under the Mediterranean climate conditions of the California coast and in glaciated areas of northeastern and midwestern states. They are covered by shallow water for variable periods of time from winter to spring, but may be completely dry for most of the summer and fall. These wetlands range in size and are usually found in a gently sloping plain of grassland.

(w) W Definitions.

“Waiver for de minimis development” means a waiver of coastal development permit requirements for development in the coastal zone.

“Wireless telecommunications facility” means antennas and towers, either individually or together, and associated equipment and structures used for wireless telecommunications purposes. Includes commercial radio, television antennas, and commercial communication transmitters or towers. [Ord. 20-023 § 2, 2020].

23.90.030 Coastal development permit processing procedures.

This section provides procedures for coastal development permit (CDP) application processing, filing, review, noticing, and action for development in the city of Pacific Grove’s CDP jurisdiction within the coastal zone.

(a) CDP Required. All development, as defined in Coastal Act Section 30106, within the coastal zone requires a CDP except as specified in PGMC [23.90.040](#) and [23.90.045](#) (CDP Exemptions and Waivers for De Minimis Development).

(b) Reviewing Authority. The planning commission shall take initial action on all CDP applications (except as provided for in PGMC [23.90.040](#)). Certain planning commission decisions can be appealed to the city council or referred directly to the city council upon its request, where the city council becomes the reviewing authority. Certain city council decisions can be appealed to the Coastal Commission, where the Coastal Commission becomes the reviewing authority, all as described in PGMC [23.90.100](#).

(c) Additional Permits. The review of a CDP application shall be processed concurrently with any other discretionary permit applications required by the city. Any such discretionary approvals become effective only after a CDP is approved as required by this chapter and so long as they are consistent with the CDP terms and conditions. The city may not grant any discretionary approval for a proposed project that conflicts with this chapter.

(d) Unpermitted Development and Permitting Processes. Development that occurred after the effective date of the Coastal Act of 1976 (i.e., January 1, 1977), or after the Coastal Initiative of 1972 (February 1, 1973), whichever is applicable, and that did not receive a CDP or was not otherwise authorized under the Coastal Act/Coastal Initiative, is not lawfully established or authorized development (“unpermitted development”). In addition, development inconsistent with the terms and conditions of an approved CDP is also not lawfully established or authorized development. Both categories of unpermitted development shall be the subject of this IP’s enforcement section, which may include Coastal Commission enforcement as well (see PGMC [23.90.010](#)(e)). If development is proposed on a site with unpermitted development, then such application may only be approved if it resolves all permitting and coastal resource issues associated with the unpermitted development,

including through retention of all or part of same if it can be approved as LCP consistent, or through removal and restoration of affected areas. [Ord. 20-023 § 2, 2020].

23.90.040 CDP exemptions.

In accordance with Coastal Act Section 30610 and Title 14 of the California Code of Regulations (CCR), Sections 13250, 13252, and 13253, all of which govern here in the case of conflicts or questions of interpretation, the following projects are exempt from the requirement to obtain a CDP:

(a) Existing Single-Family Residences. Improvements to an existing single-family residence, including fixtures and structures directly attached to a residence, landscaping, and structures normally associated with a single-family residence, such as garages, swimming pools, fences and storage sheds. This exemption does not include:

(1) Improvements to a single-family residence if the residence or any improvement is located on a beach, in a wetland, seaward of the mean high-tide line, within an environmentally sensitive habitat area including all improvements within the Asilomar Dunes Residential Area and Asilomar Conference Grounds, in an area designated highly scenic in the LCP (i.e., those areas designated in LUP Figure 4: Scenic Areas), or within 50 feet of the edge of a coastal bluff.

(2) Any significant alteration of land forms including removal or placement of vegetation on a beach, wetland, or sand dune, within 50 feet of the edge of a coastal bluff, or within an environmentally sensitive habitat area.

(3) The expansion or construction of water wells or septic systems.

(4) Guest houses or self-contained residential units.

(5) On property not included in subsection (a)(1) of this section that is located 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 of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated in LUP Figure 4: Scenic Areas map, when one of the following circumstances apply:

(A) Improvement that would result in an increase of 10 percent or more of internal floor area of an existing structure; or

(B) An additional improvement of 10 percent or less where an improvement to the structure has previously been undertaken pursuant to this section; or

(C) An increase in height by more than 10 percent of an existing structure; or

(D) An increase of height of 10 percent or less where height has already been undertaken pursuant to this section; and/or

(E) Development that includes any significant nonattached structure such as garages, fences, shoreline protective works or docks.

(6) Any improvement to a single-family residence where the coastal development permit issued for the original structure by the Coastal Commission or city indicated that any future improvements would require a coastal development permit or a CDP amendment or some other type of coastal authorization (e.g., a CDP waiver).

(b) Other Existing Structures. Improvements to an existing structure, other than a single-family residence or public works facility, including landscaping and fixtures and other structures directly attached to the structure. This exemption does not include:

(1) Improvements to a structure if the structure or improvement is located on a beach; in a wetland, stream or lake; seaward of the mean high-tide line; in an area designated highly scenic in the LCP (i.e., those areas designated as scenic view areas in LUP Figure 4); or within 50 feet of the edge of a coastal bluff.

(2) Any significant alteration of land forms including removal or placement of vegetation on a beach or sand dune; in a wetland or stream; within 100 feet of the edge of a coastal bluff, in a highly scenic area, or in an environmentally sensitive habitat area.

(3) The expansion or construction of water wells or septic systems.

(4) On property not included in subsection (b)(1) of this section that is located 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 of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated in LUP Figure 4: Scenic Areas map, when one of the following circumstances apply:

(A) Improvement that would result in an increase of 10 percent or more of internal floor area of an existing structure;

(B) An additional improvement of 10 percent or less where an improvement to the structure has previously been undertaken pursuant to this section;

(C) An increase in height by more than 10 percent of an existing structure;

(D) An increase of height of 10 percent or less where height has already been undertaken pursuant to this section; or

(E) Development includes any significant nonattached structure such as garages, fences, shoreline protective works or docks.

(5) Any improvement to a structure which changes the intensity of use of the structure.

(6) Any improvement made pursuant to a conversion of an existing structure from a multiple unit rental use or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold including, but not limited to, a condominium conversion, stock cooperative conversion or motel/hotel timesharing conversion.

(7) Any improvement to a structure where the coastal development permit issued for the original structure by the Coastal Commission or city indicated that any future improvements would require a coastal development permit or a CDP amendment or some other type of coastal authorization (e.g., a CDP waiver).

(c) Repair or Maintenance Activities. Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities. This exemption does not include:

(1) Any method of repair or maintenance of a seawall, revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:

(A) Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;

(B) The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agricultural dikes within enclosed bays or estuaries;

(C) The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind;

(D) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, bluff, or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams;

(E) The placement of dredged spoils of any quantity within an environmentally sensitive habitat area, on any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams; or

(F) The removal, sale, or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area the Commission has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.

(2) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area (including in the Asilomar Dunes residential area or the Asilomar conference grounds), any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include either of the following:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials.

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

(3) Those activities specifically described as exempt from CDP requirements in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Coastal Commission on September 5, 1978, unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat areas, wetlands, or public views to the ocean, in which case the 1978 document exemptions do not apply.

(4) Unless destroyed by natural disaster, the replacement of 50 percent or more of a single-family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure that is not in repair and maintenance under Coastal Act Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.

(d) Replacement of Destroyed Structures. The replacement of any legally established structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform to applicable LCP requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure. As used in this section, "disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner; "bulk" means total interior cubic volume as measured

from the exterior surface of the structure; and “structure” includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

(e) Temporary Events. Temporary events as defined in this section and which meet all of the following criteria:

- (1) Are not held between Memorial Day weekend and Labor Day weekend, or if proposed in this period will be of less than two weeks in duration including setup and take-down; and
- (2) Does not occupy all or a portion of a sandy beach or park area and there is no potential for adverse effect on sensitive coastal resources; and
- (3) A fee will not be charged for general public admission and/or seating where no fee is currently charged for use of the same area (not including booth or entry fees); or if a fee is charged, it is for preferred seating only and more than 75 percent of the provided seating capacity is available free of charge for general public use; and
- (4) The proposed event has been reviewed in advance by the city and it has been determined, subject to the procedure in PGMC [23.90.050](#), that it meets the following criteria:
 - (A) The event will result in no adverse impact on opportunities for public use of or access to the area due to the proposed location and/or timing of the event either individually or together with other development or temporary events scheduled before or after the particular event;
 - (B) There will be no direct or indirect impacts from the event and its associated activities or access requirements on environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources;
 - (C) The event has not previously required a coastal development permit to address and monitor associated impacts to coastal resources.

(f) Emergency Work. Immediate emergency work necessary to protect life or property, or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the governor pursuant to Chapter 7 (commencing with Section [8550](#)) of Division 1 of Title 2 of the Government Code. [Ord. 20-023 § 2, 2020].

23.90.045 Waivers of de minimis development.

(a) Authority. The director may issue a written waiver from coastal development permit requirements of this chapter for any development that is de minimis.

(b) Determination of Applicability. A proposed development is de minimis if the director determines, based on a review of an application for a coastal development permit, that the development satisfies all of the following requirements:

(1) The proposed development is within the coastal zone; the development is not of a type or in a location where an action on the development would be appealable to the Coastal Commission; and not within an area where the Coastal Commission retains permit jurisdiction and no local public hearing is required.

(2) The proposed development involves no potential for any adverse effect, either individually or cumulatively, on coastal resources and that it will be consistent with the certified local coastal program.

The determination shall be made in writing and based upon factual evidence.

(c) Applicability. The director may consider the following types of development for possible permit waivers:

(1) Projects that would have been placed on the consent calendar of the city council agenda without special conditions;

(2) Projects fully consistent with the certified LCP and for which all applicable policies of the LCP are objective in nature, such that staff does not have to exercise its judgment as to satisfaction of subjective criteria; and

(3) Projects located in areas where similar projects have been approved as a routine matter without conditions or opposition.

(d) The following projects will not be considered for possible waivers:

(1) Projects that involve questions as to conformity with the certified LCP, or that may result in potential impacts on coastal resources and public access;

(2) Projects with known opposition or probable public controversy; and

(3) Projects that involve divisions of land including condominiums.

(e) Public Notice. If, upon review of the coastal development permit application, the director determines that the development is de minimis, the applicant shall post public notice of the de minimis waiver on the property for at least 10 working days prior to the final decision granting the waiver. Notice of intent to issue a de minimis waiver shall also be made to all persons who have requested to be on the mailing list for that development project or site or for coastal decisions within the local jurisdiction, to all property owners and residents within 300 feet of the perimeters of the parcel on which the development is proposed, to each local agency expected to provide essential facilities or services to the project, and all agencies for which an approval for the proposed development may be required within 10 working days prior to the decision on the application. The director shall provide notice, by first class mail, of pending waiver of permit requirements.

(f) Content of Public Notice. The notice shall contain the following information:

- (1) A general description of the proposed project and location;
- (2) A statement that the development is within the coastal zone;
- (3) The date of filing of the application and the name of the applicant;
- (4) The number assigned to the application;
- (5) The date at which the waiver may become effective;
- (6) The general procedure concerning the submission of public comments either in writing or orally prior to the decision; and
- (7) A statement that a public comment period of sufficient time to allow for the submission of comments by mail will be held prior to the decision.

(g) Executive Director Determination. The director shall provide a notice of determination to issue a de minimis CDP waiver to the executive director of the Coastal Commission no later than 10 working days prior to the waiver being reported at a city public hearing (see subsection (h) of this section). If the executive director notifies the community development director that a waiver should not be issued prior to the waiver being reported, the applicant shall be required to obtain a coastal development permit if the applicant wishes to proceed with the development.

(h) Review and Concurrence. The director's determination to issue a waiver shall be subject to review and concurrence by the decision makers (i.e., planning commission or city council, as applicable). The director shall not issue a waiver until the public comment period, including at a minimum through and including the required reporting of the waiver at a public hearing, has expired. At such public hearing,

the public shall have the opportunity to testify and otherwise participate in a hearing on the waiver. If two or more decision makers object to the waiver, the waiver shall not be issued and, instead, an application for a coastal development permit shall be required and processed in accordance with the provisions of this chapter. Otherwise, the waiver shall be deemed approved, effective, and issued the day of the public hearing. In addition to the noticing requirements above, within seven calendar days of effective date of a waiver, the community development director shall send a notice of final action as specified in PGMC [23.90.090](#).

(i) Waiver Expiration. A de minimis waiver shall expire and be of no further force and effect if the authorized development is not exercised by substantial ground altering physical development within two years of the effective date of the waiver. In this event, either a new de minimis waiver or a regular coastal development permit shall be required for the development. [Ord. 20-023 § 2, 2020].

23.90.050 City CDP determinations.

The determination of whether a development is exempt, waivable, nonappealable, or appealable for purposes of notice, hearing, and appeals procedures shall be made by the director at the time the coastal permit application for development is submitted or as soon thereafter as practical, and in all cases prior to the application being deemed complete for processing. This determination shall be made with reference to the certified local coastal program, including any provisions that support the determination.

Where an applicant, interested person, the Coastal Commission's executive director, or the director has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is exempt, nonappealable, or appealable:

(a) City Determination. The director shall make his or her determination as to what type of development is being proposed and shall inform the applicant, interested parties, and the Coastal Commission in writing of the notice and hearing requirements for that particular development (i.e., exempt, appealable, nonappealable).

(b) Challenge to City Determination. If the determination of the director is challenged by the applicant, the Coastal Commission's executive director, or an interested person, or if the director wishes to have a Coastal Commission determination as to the appropriate designation, the director shall notify the Commission's Central Coast District Office of the dispute/question and shall request an executive director's opinion.

(c) Coastal Commission Determination. The executive director shall within 10 working days of the request provide his or her opinion in writing to the city, the applicant, and any other known interested parties. There are three possible outcomes:

(1) If the executive director agrees with the city's determination, then the city's determination shall be final and shall apply to the proposed development.

(2) If the executive director disagrees with the city's determination, and the city accepts the executive director's opinion, then the review and permit procedures associated with the executive director's opinion shall apply to the proposed development.

(3) If the executive director disagrees with the city's determination, the matter shall be set for public hearing before the Coastal Commission to make the final determination of applicable review and permit procedures, and the Coastal Commission's determination shall apply to the proposed development. [Ord. 20-023 § 2, 2020].

23.90.060 CDP application submittal.

(a) Contents. Coastal development permit application submittals must include all the information and materials required by the community development department. It is the responsibility of the applicant to provide all necessary and requested evidence to allow for the reviewing authority to make a decision regarding whether the proposed development is consistent with the LCP, including with respect to the findings required by PGMC [23.90.080](#) (Required findings for CDP approval). The application and accompanying materials shall be filed with the city before or concurrent with application for any other required city permits for the proposed project. The CDP application shall include, at a minimum:

(1) Project plans and supporting materials sufficient to determine whether the project complies with all relevant policies of the local coastal program, including a clear depiction of all existing conditions and development on the site, and all proposed development;

(2) Documentation of the applicant's legal interest in all the property upon which development is proposed, including properties crossed or affected by construction. The area subject to the CDP application may include contiguous properties where the director finds that necessary to achieve the requirements of the local coastal program. The area covered by a proposed project may also include multiple ownerships;

(3) Documentation of any prior CDPs or other coastal authorizations on the property, including any restrictions from permit conditions, deed restrictions, easements, and any other encumbrances affecting allowable development and use on the property;

(4) All restrictions that apply to the property, including copies of the legal documents, and site plans noting where such restrictions apply;

(5) A description of any unpermitted development on the site, including any violations of existing CDP terms and conditions, and provisions for resolving all permitting and coastal resource issues associated with the unpermitted development (see also PGMC [23.90.030\(p\)](#));

(6) A dated signature by or on behalf of each of the applicants, attesting to the truth, completeness and accuracy of the contents of the application and, if the signer of the application is not the applicant, written evidence that the signer is authorized to act as the applicant's representative and to bind the applicant in all matters concerning the application; and

(7) Any additional information deemed by the director to be required for specific categories of development or for development proposed for specific geographic areas or in relation to the specific issues raised by the application.

(8) Any applicable permit fees made payable to the city clerk.

(b) Concurrent Permit Application. The application for a CDP shall be made concurrently with application for any other non-CDP permits or approvals required by the city. [Ord. 20-023 § 2, 2020].

23.90.070 CDP application public notice and hearing.

(a) Public Hearing Requirements. All planning commission and city council actions on CDP applications that are not issued a written waiver from coastal development permit requirements under PGMC [23.90.045](#) shall require a public hearing.

(b) Noticing. CDP application actions shall be noticed at least 10 days prior to the required public hearing on the proposed project by posting notice at the proposed development site in at least one location that is conspicuously visible to the general public (and as many locations as necessary to ensure that the public is appropriately provided notice), and by mailing notice to:

(1) The owner(s) and owner's agent of all properties for which development is proposed, the applicant, and any applicant representatives;

(2) Each local agency expected to provide essential facilities or services to the project;

(3) Any person who has filed a request for notice (e.g., for the site, for the particular development, for the type of development, development in general, etc.) with the director;

(4) All owners and all occupants of parcels of real property located within 100 feet (not including roads) of the perimeter of the real properties on which the development is proposed, but at a minimum all owners and all occupants of real property adjacent to the properties on which the development is proposed;

- (5) All agencies for which an approval for the proposed development may be required (e.g., USFWS, CDFW, RWQCB, etc.), including the State Lands Commission, when an application for a CDP is submitted to the city on property that is potentially subject to the public trust;
- (6) All known interested parties; and
- (7) The Coastal Commission.

For development determined to be of citywide interest, as determined by the director, legal notice shall also be published at least once in a local newspaper of general circulation in the county.

The director may also require additional means of notice that is reasonably determined necessary to provide adequate public notice of the application for the proposed project.

(c) Contents of Notice. The required notice may be combined with other required project permit notice(s), shall be mailed by first class mail and shall include the following information:

- (1) A statement that the project is within the coastal zone and that the project decision will include a determination on a CDP;
- (2) The date of filing of the application;
- (3) The name of the applicants and the applicants' agents;
- (4) The number assigned to the application;
- (5) A description of the proposed project and its location;
- (6) A determination of whether the project is appealable to the Coastal Commission;
- (7) The date, time and place of the hearing and/or decision on the application;
- (8) A brief description of the procedures for public comment and decision on the application, including listing what review authority is to decide on the CDP application, as well as the system of appeal for any actions taken; and
- (9) All procedures for challenge and appeal associated with the type of application being considered.

(d) Renoticing Required. If a decision on a CDP is continued by the review authority to a date or time not specific, the item shall be renoticed in the same manner and within the same time limits

established by this section. If a decision on a CDP is continued to a specific date and time within 30 days of the first hearing, then no renoticing is required. [Ord. 20-023 § 2, 2020].

23.90.080 Required findings for CDP approval.

To approve a CDP, the review authority must find that the development, as proposed and conditioned, is consistent with all applicable LCP policies and standards, including making all of the following findings that themselves shall be based on upon substantial evidence:

(a) LCP Consistency. The project is consistent with the LCP.

(b) Public Views. The project protects or enhances public views.

(c) Habitat Protection. The project protects vegetation, natural habitats and natural resources consistent with LCP.

(d) Design Consistency. The design, location, size, and operating characteristics of the proposed development is consistent with applicable LCP design requirements, including design plans and area plans incorporated into the LCP.

(e) Coastal Access. The project protects or enhances public access to and along the coast.

(f) Visitor Serving. The project supports the LCP goal of providing for visitor-serving needs as appropriate, including providing low and no cost visitor and recreational facilities.

(g) Appropriate Use. The project is consistent with the allowed LCP uses associated with the property.

(h) Coastal Resources. The proposed development protects or enhances coastal resources, where applicable. [Ord. 20-023 § 2, 2020].

23.90.090 Notices of city's final action on CDPs.

(a) The city's decision on a CDP shall become final when all local rights of appeal have been exhausted per PGMC [23.90.100](#). Within 10 calendar days of a final action on a CDP application, the city shall provide notice of such action by first class mail to the applicant, the Coastal Commission, and any other persons who have requested such notice by submitting a self-addressed, stamped envelope to the city. The notice sent to all parties shall at a minimum include a cover sheet or memo summarizing the relevant action information, and the notice sent to the Coastal Commission shall include that cover sheet/memo, as well as additional supporting materials that further explain and define the action taken, as follows:

(1) Cover Sheet/Memo. The cover sheet/memo shall be dated and shall clearly identify at a minimum the following information:

- (A) All project applicants and project representatives and their address and other contact information.
- (B) Project description and location.
- (C) City decision making body, city decision, and date of decision.
- (D) All local appeal periods and disposition of any local appeals filed.
- (E) Whether the city decision is appealable to the Coastal Commission, the reason why it is or is not appealable to the Coastal Commission, and procedures for appeal to the Coastal Commission.
- (F) A list of all additional supporting materials provided to the Coastal Commission (see subsection (a)(2) of this section).
- (G) All recipients of the notice.

(2) Additional Supporting Materials to the Coastal Commission. The additional supporting materials shall include at a minimum the following information:

- (A) The final adopted findings and final adopted conditions.
- (B) The final staff report.
- (C) The approved project plans.
- (D) All other substantive documents cited and/or relied upon in the decision including CEQA documents, technical reports (e.g., geologic reports, biological reports, etc.), correspondence, etc.

If the Coastal Commission does not notify the city in writing of any deficiency in such notice of final action within five calendar days of its filing, the notice of final action will be deemed filed for the purposes of this implementation plan as of the date of the notice. [Ord. 20-023 § 2, 2020].

23.90.100 Appeals of CDP decisions.

(a) Appeals to the City Council. All planning commission decisions on CDPs may be appealed by an aggrieved person to the city council. An aggrieved person is any person who, in person or through a representative, appeared at the planning commission's public hearing in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing informed the city of the nature of their concerns, or who for good cause was unable to do either. An aggrieved person includes the applicant for a CDP.

(b) City Council Appeal Submittal. An appeal must be submitted in writing within 10 calendar days of the date of the planning commission decision. The appeal shall state the pertinent facts and the basis for the appeal, and shall be filed with applicable fees to the city clerk.

(1) When an appeal is filed, the director shall prepare a report on the matter and schedule the matter for a public hearing before the city council. Notice of the hearing shall be provided in the same form as is required for consideration of the initial CDP application. Any party may appear and be heard regarding the appeal. The city council's hearing is de novo and the city council may consider any issue involving CDP. The city council is not limited to the specific grounds for the appeal. The city council may:

(A) Affirm, affirm in part, or reverse the action or decision that is the subject of the appeal, based upon findings of fact. The findings shall identify the reasons for the action on the appeal and verify the compliance or noncompliance of the subject of the appeal with the LCP;

(B) Modify or delete conditions and adopt additional conditions of approval; and

(C) Disapprove a CDP approved by the planning commission, even if the appellant only requested modification or elimination of one or more conditions of approval.

(2) At its discretion, the city council may refer the matter back to the planning commission for further consideration, where such hearing shall be noticed and conducted in the same manner as for the initial consideration of the application.

(c) Appeals to the Coastal Commission.

(1) In accordance with Coastal Act Section 30603, any city CDP approval in the following geographic areas may be appealed to the Coastal Commission:

(A) Projects located 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.

(B) Projects located 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.

(C) Projects in a sensitive coastal resource area (i.e., in the Asilomar Dunes residential area or the Asilomar conference grounds).

(2) In accordance with Coastal Act Section 30603, any city CDP approval or denial for a major public works project (including a publicly financed recreational facility or a special district development) or a major energy facility may be appealed to the Coastal Commission.

(3) Appeals to the Coastal Commission may be filed by the project applicant, any aggrieved person, or any two members of the Coastal Commission, and must be submitted to the Coastal Commission within 10 working days of Coastal Commission receipt of a nondeficient notice of final action.

(4) City decisions may be appealed to the Coastal Commission only after an appellant has exhausted all local appeals from the planning commission to the city council, except that exhaustion of city council appeals is not required if any of the following occur:

(A) The city requires an appellant to appeal to a body other than the city council.

(B) An appellant was denied the right of the appeal by a city ordinance that restricts the class of persons who may appeal a local decision other than as provided in this implementation plan.

(C) An appellant was denied the right of local appeal because city notice and hearing procedures for the development did not comply with the provisions of this chapter.

(D) The city required an appeal fee for the filing or processing of the appeal to the city council. [Ord. 20-023 § 2, 2020].

23.90.110 Coastal development permits (CDP).

(a) CDP Effective Date.

(1) For CDP decisions that are not appealable to the Coastal Commission, CDPs shall become effective once the city's nondeficient notice of final action per PGMC [23.90.090](#) has been received by the Commission.

(2) For CDP decisions that are appealable to the Coastal Commission, CDPs shall become effective either (A) after the Coastal Commission's 10-working-day appeal period has run with no valid appeal being filed, or (B) following Coastal Commission final action on an appeal, subject to any terms and conditions of such action.

(b) CDP Expiration. A CDP not exercised by substantial ground altering physical development within two years of the date of its approval shall expire and become void, unless an extension of the expiration deadline is approved. Such extension shall only be granted for good cause, and only if there are no changed circumstances that may affect the consistency of the development with the LCP (and the Coastal Act, if applicable). In such cases where an extension is not granted, the CDP shall be considered expired and the applicant shall be required to reapply for a CDP. Any extension request shall be in writing by the applicant or authorized agent and received by the city prior to expiration of the two-year period. No CDP extension request may be considered if received after its expiration. Extensions shall be considered CDP amendments for purpose of notice and appeal to the Coastal Commission.

(c) CDP Amendment. An applicant may request a CDP amendment by filing an application to amend the CDP pursuant to the requirements of this chapter that apply to new CDP applications. Any amendment approved for development in the coastal zone shall be required to be found consistent with all applicable Local Coastal Program requirements, including with regards to requirements of jurisdiction, hearings, notices and findings for approval, in the same way as new CDPs. Any CDP amendment shall be processed as appealable to the Coastal Commission if the base coastal permit was also processed as appealable, or if the development that is the subject of the amendment makes the amended project appealable to the Coastal Commission.

(d) CDP Revocation. Where one or more of the terms and conditions of a CDP have not been, or are not being, complied with, or when a CDP was granted on the basis of false material information, the planning commission or city council may revoke or modify the CDP following public hearing. Notice of such hearing shall be the same as would be required for a new CDP.

(e) CDP Application Resubmittals. For a period of 12 months following the denial of a CDP, the city shall not accept an application for the same or substantially similar proposed project for the same site, unless the denial or revocation was made without prejudice, and so stated in the record. [Ord. 20-023 § 2, 2020].

23.90.120 Emergency CDPs.

Emergency CDPs may be granted at the discretion of the director (or a local official designated by the city council) for projects normally requiring CDP approval. To be eligible for an emergency CDP, an

emergency must exist (defined for this purpose as a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services), including when necessary to restore, repair, or maintain public works, utilities, and services during and immediately following a natural disaster or serious accident or other cases of emergency. The emergency CDP process is intended to allow for emergency situations to be abated through use of the minimum amount of temporary measures necessary to address the emergency in the least environmentally damaging manner.

(a) Application. Application for an emergency CDP shall be made to the city by letter if time allows, and by telephone or in person if time does not allow. The applicant shall submit the appropriate fees at the time of application for an emergency permit.

(b) Required Information. The information to be reported during the emergency, if it is possible to do so, or to be fully reported after the emergency, shall include all of the following:

- (1) The nature of the emergency.
- (2) The cause of the emergency, insofar as this can be established.
- (3) The location of the emergency.
- (4) The remedial, protective, or preventive work required to address the emergency.
- (5) If reported after the fact, the circumstances during the emergency that appeared to justify the course of action taken, including the probable consequences of failing to take action.
- (6) All available technical reports and project plans.

(c) Verification of Facts. The Director or other designated local official shall verify the facts, including the existence and nature of the emergency, as time allows. The director may request, at the applicant's expense, verification by a qualified professional of the nature of the emergency and the range of potential solutions to the emergency situation, including the ways such solutions meet the criteria for granting permit. The director shall consult with the Coastal Commission as time allows.

(d) Public Notice. If time allows, the director shall provide public notice of the proposed emergency action, with the extent and type of notice determined on the basis of the nature of the emergency itself.

(e) Criteria for Granting Emergency CDP. The director may grant an emergency CDP upon making all of the following findings, that themselves shall be based upon clear supporting evidence and analysis:

- (1) An emergency exists and requires action more quickly than permitted by the procedures for ordinary CDPs.
 - (2) The development can and will be completed within 30 days unless otherwise specified by the terms of the emergency CDP.
 - (3) Public comment on the proposed emergency action has been reviewed if time allows.
 - (4) The work proposed would be consistent with the requirements of the certified LCP.
 - (5) The proposed work is the minimum amount of temporary development necessary to abate the emergency in the least environmentally damaging manner.
- (f) Conditions for Granting Emergency CDP. The director may attach reasonable terms and conditions to the granting of an emergency CDP, including an expiration date and the necessity for submittal of a regular CDP application by a specified date. At a minimum, all emergency CDPs shall include the following conditions:
- (1) The emergency CDP shall be voided if the approved activity is not exercised within 30 days of issuance of the emergency CDP.
 - (2) The emergency CDP shall expire 60 days following its issuance. The director may extend an emergency CDP for an additional 60 days for good cause including but not limited to the fact that a regular CDP application is on file.
 - (3) Any work completed outside of these time periods requires a regular CDP approval unless an extension is granted by the city.
 - (4) The emergency development authorized by the emergency CDP is only temporary, and can only be allowed to remain provided a regular CDP is obtained to recognize it. Absent a regular CDP, the emergency development shall be removed and the affected area restored to pre-emergency conditions or better within six months of emergency CDP issuance.
 - (5) Within 30 days of completion of construction authorized by the emergency CDP, site plans and cross sections shall be submitted clearly identifying all development completed under the emergency CDP (comparing any previously permitted condition to both the emergency condition and to the post-work condition), along with a narrative description of all emergency development activities undertaken pursuant to the emergency authorization. Photos showing the project site before the emergency (if available), during emergency project construction activities, and after the work authorized by the emergency CDP is complete shall also be provided.

(g) Application for Regular CDP. Upon the issuance of an emergency CDP, the applicant shall submit a completed CDP application and any required technical reports within a time specified by the director, not to exceed 90 days. All emergency development approved pursuant to this section is considered temporary and must be removed and the area restored if the development is not recognized by a regular CDP within six months of the date of the emergency CDP issuance, unless the director authorizes an extension of time for good cause.

(h) Reporting of Emergency CDPs. The director shall report emergency CDPs issued to the Coastal Commission and to the city council and planning commission. The emergency CDP shall be scheduled on the agenda of the city council at its first scheduled meeting after that emergency CDP has been issued. [Ord. 20-023 § 2, 2020].

23.90.130 Coastal resource protection standards.

The following sections (PGMC [23.90.140](#) through [23.90.220](#)) serve to implement the policies of the LCP's LUP as they relate to specific topics, including by describing application requirements, technical reports, and required findings. The following topics are covered below:

- PGMC [23.90.140](#): Coastal hazards;
- PGMC [23.90.150](#): Water quality and marine resources;
- PGMC [23.90.160](#): Scenic resources;
- PGMC [23.90.170](#): Biological resources and/or environmentally sensitive habitat areas;
- PGMC [23.90.180](#): Coastal community design;
- PGMC [23.90.200](#): Cultural resources;
- PGMC [23.90.210](#): Public infrastructure;
- PGMC [23.90.220](#): Parks, recreation, and public access. [Ord. 20-023 § 2, 2020].

23.90.140 Coastal hazards.

(a) In order to protect life, property, and coastal resources from coastal hazards, and to maintain consistency with the LCP's land use plan (LUP), development shall conform to all applicable land use plan coastal hazards policies and the following requirements:

(b) Applications for All Development Potentially Subject to Coastal Hazards.

(1) Initial Coastal Hazards Assessment. The applicant shall submit an initial site assessment screening to determine whether the site may be subject to coastal hazards over its lifetime (generally over at least the next 75 years). The screening shall include a review of CDPs issued or applied for at the subject site and immediate vicinity, technical reports, resource maps, aerial photographs, site inspection, and the LCP's coastal hazard map in LUP Figure 3. Maps can be used as a resource for identification of coastal hazard areas; however, absence of mapping cannot alone be considered absence of hazard, and local site conditions must be examined at the time of coastal permit application using the best available science.

(2) Coastal Hazards Report. Where the initial site assessment reveals that the proposed development is located on or seaward of Ocean View Boulevard or Sunset Drive, mapped within LUP Figure 3, and/or otherwise may be subject to coastal hazards over the next 75 years, a site-specific coastal hazards report (report) shall be prepared. The report shall at a minimum provide for:

(A) Purpose. The report shall be prepared by a qualified geologist/engineer and shall identify the potential impacts of erosion, episodic and long-term shoreline retreat, flooding, inundation, storm waves, high seas, tidal scour, and tsunamis, including in relation to sea level rise, over the life of the development. The report shall recommend any mitigation measures or modifications to the project that are needed to ensure that the project is consistent with all applicable land use plan coastal hazards policies.

(B) Content. The report shall, at a minimum, contain the following sections:

- (i) Summary;
- (ii) Geology of the project area;
- (iii) Wave, tide, and current trends;
- (iv) Erosion trends and episodes in project area;
- (v) Seasonal beach profiles and trends;
- (vi) Impacts from coastal hazards on the proposed project;
- (vii) Description of project alternatives to avoid/minimize coastal hazard impacts;
- (viii) Mitigation of coastal hazard impacts;

- (ix) Conclusions and recommendations;
- (x) Coordination with other agencies, groups, or consultants;
- (xi) Report preparer's qualifications;
- (xii) References.

(C) Coastal Hazards Analysis. The report shall at a minimum document the following:

- (i) Regional and local geologic setting, including topography, natural landforms, soil/rock types, thickness of soil or depth to bedrock, and other relevant properties such as erosion potential.
- (ii) Information about potential coastal hazards at the site, including normal and maximum tidal surges, wave conditions (including maximum expected wave height and frequency/magnitude of wave/tidal surge), storm conditions (including storm waves from a 100-year event or a storm that compares to the 1982/83 El Niño event).
- (iii) Long-term average annual erosion rates, based on photogrammetric analysis, LiDAR data, and peer reviewed studies and reports, etc., quantified in distance per year (e.g., six inches per year). The long-term average annual erosion rate should be broken down separately for any differing geologic units (e.g., erosion for the upper bluff terrace deposits may differ from erosion for a harder lower bluff substrate) to the extent that these long-term rates differ.
- (iv) Episodic or rapid erosion, based on recent observations from the project site or nearby areas of comparable geology.
- (v) Ground and surface water conditions and variations, including hydrologic changes caused by the development (e.g., introduction of sewage effluent and irrigation water to the groundwater system, and alterations in surface drainage).
- (vi) For coastal bluffs, quantitative slope stability analyses, including a description of the factors of safety for the site and structures on it, and a breakdown, as appropriate, for the factors of safety applying to the full bluff profile.
- (vii) Expectations for the near-term (three to five years) changes to the site, considering current erosion and related conditions (including wave and storm conditions).

(viii) Expectations for longer-term changes, including the effects of sea level rise.

(ix) Effect of the proposed development (including siting and design of structures, septic system, landscaping, drainage, and grading) and impacts of construction activity on the stability of the site and the adjacent area.

(D) Mitigation of Coastal Hazards Analysis. The report shall include a detailed analysis of alternative options to avoid identified erosion/site stability hazards, including nonarmoring alternatives. At a minimum the analysis shall include:

(i) Evaluation of alternatives including avoiding proposed development; relocation of any threatened structures, including an analysis of any technical feasibility questions and an estimate of expected costs to be borne by the property owner to relocate; partial removal of threatened elements, again with a clear analysis and estimate of how this would be accomplished; and site drainage controls and native plant revegetation.

(ii) Expectations on the degree of protection for each alternative must be provided, including an estimate of the number of years of stability provided to the structure or development being protected (absent additional armoring or other measures) associated with each option.

(iii) A combination of different alternatives should be considered when appropriate, such as for example, vegetation, surface water controls and periodic nourishment; or the use of incremental responses tied to identified triggers.

(iv) Identification of potential mitigation measures to address identified coastal resource impacts in each case.

(c) Applications for Shoreline Protective Devices.

(1) In addition to the measures listed above, applications for shoreline protective devices shall be accompanied by the following information:

(A) Permit History. A description of the permitting history of the structure (and associated development) for which the proposed shoreline protective device is sought, as well as the permitting history for any existing device protecting the structure. Such history shall identify the date of the structure's (and device's, if applicable) construction, its configuration at that time, any subsequent projects that altered its initial installation configuration, and any

associated coastal development permits. All coastal development permits authorizing such development since 1972 must be identified.

(B) Coastal Hazards Threat. Information about the degree of the coastal hazards threat and risk to the existing structure that is warranting the proposed project (i.e., identification of the problem). The analysis shall include supporting geotechnical information including normal and maximum tidal surges, wave conditions (including maximum expected wave height), storm conditions, the effects of future sea level rise within the expected lifetime of the project based on the best available climate science, erosion rates with/without the device, and other applicable coastal processes at this location and the larger area.

(C) Coastal Processes. A wave uprush study describing the device's design wave height, maximum expected wave height, frequency of overtopping, and normal and maximum tidal ranges. The conditions that shall be considered in the wave uprush study are: (i) a seasonally eroded beach combined with long-term erosion; (ii) high tide conditions, combined with long-term projections for sea level rise; (iii) storm waves from a 100-year event or a storm that compares to the 1982/83 El Niño event. The study shall also document the effect of the device on adjoining property, the potential/effect of scouring at the device's base, and design life/maintenance provisions.

(D) Alternatives Analysis. An alternatives analysis of potential options that could be used to achieve the project goals while maximizing the value of the shoreline (e.g., aesthetic, recreational/access, habitat). These alternatives may include (but are not limited to) the use of "soft" protective strategies such as beach nourishment or stabilization using vegetation, "managed retreat" strategies, and a "no action" option. The descriptions of these alternatives shall include expected lifespans, reasons why they may or may not be feasible (e.g., engineering, site-specific wave and shoreline conditions, economics, etc.), and information about the environmental impacts of the feasible alternatives.

(E) Visual Simulations. Visual simulations of the proposed project (and all identified alternatives) from public vantage points, including from along Ocean View Boulevard, Sunset Drive, and the public pedestrian recreational trail.

(F) Impact Analysis. Sand supply and public access impact analysis that describes the following over a 20-year period:

- (i) The loss of any existing public trails or accessways;
- (ii) The loss of the public beach area on which the device is located;

(iii) The loss of public beach area that will result when the back-beach or bluff location is fixed on an eroding shoreline;

(iv) The amount of material that would have entered the sand supply system if the back-beach or bluff were to erode naturally.

(G) Mitigation Plan. The mitigation plan shall identify potential public access improvements within the vicinity of the proposed shoreline protective device that are commensurate with the sand supply and public access impacts identified in the impact analysis described above. Such improvements may include new or restored vertical or lateral beach accessways, long-term beach nourishment programs, or other public access and recreation improvements. The mitigation plan shall require installation of any public access improvements within six months of construction of the shoreline protective device.

(H) Maintenance and Monitoring Plan. The maintenance and monitoring plan shall include ongoing monitoring of the shoreline protective device and related improvements and describe any future maintenance. The plan must acknowledge and agree on behalf of the applicant and all successors and assigns that it is applicant's responsibility to (i) maintain the approved protective device and any required mitigation in a structurally sound manner and in their approved states, including that the color, texture and undulations of the surfaces shall be maintained throughout the life of the device; (ii) retrieve any failing portion of the permitted device or related improvements that might otherwise substantially impair the aesthetic qualities of the area; and (iii) annually or more often inspect the development for signs of failure or displaced structural components. [Ord. 20-023 § 2, 2020].

23.90.150 Water quality and marine resources.

(a) In order to protect water quality and marine resources in the city's coastal zone, and to maintain consistency with the LCP's land use plan (LUP), development shall conform to all applicable land use plan water quality and marine resources policies and the following requirements:

(b) Applications for Development. The applicant shall submit a water quality assessment for all development proposals, including for both new development and modifications to existing development, to identify potential water quality impacts. Where the assessment reveals the potential for water quality impairment, the project shall be required to have both a construction plan which addresses temporary (i.e., during construction) and a post-development runoff plan which addresses permanent (i.e., post construction) measures to control erosion and sedimentation, to reduce or prevent pollutants from entering storm drains, drainage systems, and watercourses, and to minimize increases in stormwater runoff volume and rate.

(1) Construction Plan. The construction plan shall, at a minimum, include the following:

(A) Identification of the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities or staging are to take place shall be minimized to the fullest extent feasible in order to have the least impact on public access and ocean resources, including by using inland areas for staging and storing construction equipment and materials as feasible.

(B) Specification of the construction methods to be used, including all methods to be used to keep the construction areas separated from public recreational use areas (including using unobtrusive fencing or equivalent measures to delineate construction areas), and including verification that equipment operation and equipment and material storage will not significantly degrade public views during construction to the maximum extent feasible.

(C) Identification of the type and location of all erosion control/water quality best management practices that will be implemented during construction to protect coastal water quality, including at a minimum the following: (i) silt fences, straw wattles, or equivalent apparatus shall be installed at the perimeter of the construction site to prevent construction-related runoff or sediment from discharging to the ocean; (ii) equipment washing, refueling, and/or servicing shall take place at least 100 feet from the coastal waters. All construction equipment shall be inspected and maintained at an off-site location to prevent leaks and spills of hazardous materials at the project site; (iii) the construction site shall maintain good construction housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the site); and (iv) all erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each work day.

(D) The construction plan shall provide that copies of the signed CDP and the approved construction plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved construction plan, and the public review requirements applicable to them, prior to commencement of construction.

(E) The construction plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of

both regular inquiries and emergencies), and that the construction coordinator's contact information (i.e., address, phone numbers, email, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name and contact information (i.e., address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

(2) Post-Development Runoff Plan. The post-development runoff plan shall, at a minimum, include the following:

(A) Quantification of impervious surface area, including any changes in impervious area.

(B) Identification of pollutants potentially generated and hydrologic characterization, including direction and location of runoff.

(C) Description of low impact development strategies including protection and restoration of natural hydrological features; preservation and enhancement of noninvasive vegetation; maintaining or enhancing on-site filtration; minimizing impervious surfaces; disconnecting impervious surfaces from storm drain system.

(D) Use of alternative BMPs where on-site filtration is not feasible including use of green roofs; directing runoff to off-site infiltration facility; harvesting rooftop runoff for use that drains to sanitary sewer system.

(E) Identification of all post-development structural BMPs, stormwater conveyances and discharges, structures, and pavements, including calculations for sizing BMPs using design storm standard.

(F) Use of source control BMPs in all development. BMP installation or implementation schedule.

(G) Description of BMP management including operations and maintenance, inspection, and training. [Ord. 20-023 § 2, 2020].

23.90.160 Scenic resources.

(a) In order to enhance public views and the scenic qualities of the city's coastal zone, and to maintain consistency with the LCP's land use plan (LUP), development shall conform to all applicable land use plan scenic resources policies and the following requirements.

(b) Applications for Development in Scenic Areas. The following documentation and requirements shall be provided for all CDP applications within scenic areas, including those mapped in LUP Figure 4; all development on, seaward, or visible from Ocean View Boulevard, Sunset Drive, and the pedestrian recreational trails seaward of these roads; and any other development that may adversely impact public views:

(1) Site-Specific Visual Analysis. At a minimum, the visual analysis shall include the following:

(A) A site plan that identifies all public view corridors and pictures of existing public views of and including the project site from public viewing areas, including all before-and-after public views of and towards the ocean.

(B) Project plans that confirm height is within the requirements of the zoning district in which it is located. Exceptions are allowed only for chimneys, vents, and similar vertical extensions, not to exceed an additional four feet, and not to comprise more than five percent of a building's roof area. In all cases, heights may be further limited in order to meet LCP scenic resource protection requirements.

(C) When trees defined as major vegetation are proposed for removal, ribbons showing the location of the removal must be installed.

(D) Illustration showing the colors, textures, and architectural styles to show the exterior facades are compatible with development on adjacent blocks and the city's overall architectural character and do not cause the project to stand out from surrounding built and natural features.

(E) Any other information deemed necessary to determine the visual impact of the proposed project, including but not limited to analysis of the heights of existing buildings within 150 feet of the proposed structure; story poles and netting showing proposed ridgelines; and visual simulations to help identify potential visual impacts.

(2) Exterior Lighting Plan. Where exterior lighting is proposed, a plan showing the location, types, and intensity of the proposed lights is required. At a minimum, the exterior lighting plan must include the following:

(A) Lighting that is designed to minimize light spill into natural areas by using cut-off fixtures, directing light to the ground, and not flooding the site with light.

(B) Lighting that is minimally visible from coastal beaches and bluffs, and off-shore locations.

(C) Lighting that uses cut-off, shielded, or downward fixtures (i.e., the bulb is not directly visible) and is restricted to 60 watts (incandescent) or equivalent (15 watt fluorescent or seven and one-half watt LED).

(D) Lighting that does not blink or flash unless required for navigation, safety, or similar purposes.

(E) Unless shielded from the coast by buildings or vegetation, trail lighting that is mounted on bollards no greater than four feet tall and with the lighting shielded from the coast.

(F) Anti-reflective window glazing, awnings, or other anti-glare methods on south- and west-facing elevations and those elevations visible from public view points.

(3) Landscaping Plan. For projects that include landscaping that may impact public views, a plan showing the type, location, and mature height of all trees and shrubs shall be required. At a minimum, the landscaping plan must include the following:

(A) Landscaping maintenance requirements that ensure, during both the growing stage and at maturity, plantings will not significantly encroach into a public view corridor or significantly obstruct public views to and of the ocean and shoreline areas.

(B) New plantings adjacent to public areas from which ocean views are available are designed to preserve those public views. Hedge plantings must not exceed three feet in height, and shrubs shall be spaced or clustered to enhance views.

(C) Trees that contribute to the scenic coastal character are retained, including trees along the shoreline and at Asilomar conference grounds. If removed, for example, due to disease or for public safety, these trees shall be replaced with an appropriate native species.

(D) Where development will occur within a forested area, a reforestation plan and/or tree protection plan to ensure appropriate tree replacement or protection from damage.

(E) Landscaping that blends into the natural surroundings to the greatest extent.

(F) Landscaping with plants native to the general region and selected for tolerance of drought and compatibility with the natural landscape, with an exception to allow Magic Carpet rosy ice plant (*Drosanthemum floribundum*) at Perkins Park. [Ord. 20-023 § 2, 2020].

23.90.170 Biological resources and/or environmentally sensitive habitat areas.

(a) In order to protect biological resources in the city's coastal zone, and to maintain consistency with the LCP's land use plan (LUP), development shall conform to all applicable land use plan biological resources and/or environmentally sensitive habitat area (ESHA) policies and standards and the following requirements.

(b) Applications for Development Potentially Affecting Biological Resources and/or ESHA.

(1) Initial Site Assessment. The applicant shall submit an initial site assessment with CDP applications potentially affecting biological resources or ESHA to determine whether the site may contain such resources. The screening shall include a review of reports, resource maps, aerial photographs, site inspection, and the LCP's biological resource maps in Figure 5. Maps can be used as a resource for identification of biological resource areas; however, absence of mapping cannot alone be considered absence of resource, and local site conditions must be examined at the time of coastal permit application using the best available science.

(2) Biological Assessment. If the initial site assessment reveals the potential presence of ESHA within 100 feet of any portion of the proposed development, a biological assessment conducted by a qualified biologist shall be required. The city may require independent peer review of a biological assessment prepared by an applicant, at the applicant's expense. At a minimum, the biological assessment shall include the following:

(A) Date of site visit(s), description of study methods, and description of the biological conditions observed on the site and in the surrounding area;

(B) Discussion of potential for occurrence of and map identifying the location of any special-status species, including all species included within United States Fish and Wildlife Service endangered species lists and programs, California Department of Fish and Wildlife's California Natural Diversity Database, and the California Native Plant Society Inventory of Rare and Endangered Plants on both the site, as well as within the eight surrounding quadrangles of the United States Geological Survey quadrangle in which the site is located;

(C) List of dominant plant species on the parcel, including location, species, girth, height, and condition of protected trees;

(D) Description of natural features, plant communities, wildlife habitats, and special environmental features of the site or region, and assessment of special-status natural communities; wetlands, and wildlife movement corridors found on the site or potentially affected by the project;

(E) Discussion of potential adverse impacts of proposed projects on biological resources;

(F) Recommendations for further biological surveys, if deemed to be necessary for state and/or federal regulatory compliance; and

(G) Recommended mitigation, minimization, or avoidance measures to compensate for potential impacts to significant biological resources, including description of alternative designs for the proposed project (if any are proposed) and how alternative designs relate to the biological resources on the site and alternative design impacts compare to those of the project.

(3) Construction Mitigation and Monitoring Plan. A construction mitigation and monitoring plan shall be required for all development projects that, according to a biological assessment, may have the potential to adversely impact biological resources during construction. Based upon site specific resources, the construction mitigation and monitoring plan may require the following: preconstruction biological surveys; biological monitors; preconstruction worker education; limitations on staging and stockpile areas; appropriate buffers and temporary protective barriers; seasonal restrictions; and any other requirement necessary to protect biological resources.

(c) Applications for Development in the Asilomar Dunes Residential Area. In addition to the biological assessment and construction mitigation and monitoring plan described above, the following documentation and requirements shall be provided for all CDP applications within the Asilomar Dunes residential area:

(1) Land Survey. A site survey conducted by a licensed professional land surveyor to confirm the size of the lot. The survey shall also document coverage calculations for the primary coverage area, outdoor use area, and protected dune area. All coverage calculations shall be provided and broken down by classification and accompanied by a site plan illustration keyed to each subtype in closed polygon format.

(2) Dune Restoration Plan. The dune restoration plan shall provide for dune and related habitat enhancement for all areas outside the residential coverage area, including on any city right-of-way adjacent to the project site. The dune restoration plan shall include:

(A) Final contours of the site, after project grading, necessary to support dune restoration and development screening, shall be identified.

(B) Landscape and irrigation parameters that shall identify all plant materials (size, species, and quantity), all irrigation systems, and all proposed maintenance. All plants used on site shall be native species from local stock appropriate to the Asilomar Dunes planning area. Nonnative and invasive plant species shall be removed and shall not be allowed to persist on the site. The planting of nonnative invasive species, such as those listed on the California Invasive Plant Council's Inventory of Invasive Plants, is prohibited. All plant materials shall be selected to be complementary with the mix of native habitats in the project vicinity, prevent the spread of exotic invasive plant species, and avoid contamination of the local native plant community gene pool. The restoration plan shall also be designed to protect and enhance native plant communities on and adjacent to the site, including required restoration and enhancement areas. All restored areas shall be continuously maintained; all plant material shall be continuously maintained in a litter-free, weed-free, and healthy growing condition.

(C) All required plantings shall be maintained in good growing conditions throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the restoration plan.

(D) Installation of all plants shall be completed prior to occupancy of the residence. At a minimum, long-term maintenance requirements shall include site inspections by a qualified biologist annually, or more frequently on the recommendation of the biologist, to identify and correct any restoration and maintenance issues.

(E) Five years from the date of initial planting under the restoration plan, and every 10 years thereafter, the permittee or her successors in interest shall submit a restoration monitoring report prepared by a qualified specialist that certifies that the on-site restoration is in conformance with the approved restoration plan, along with photographic documentation of plant species and plant coverage.

(F) If the restoration monitoring report or biologist's inspections indicate the restoration is not in conformance with or has failed to meet the performance standards specified in the restoration plan, the permittee, or her successors in interest, shall submit a revised or supplemental restoration plan for review and approval. The revised restoration plan must be prepared by a qualified specialist, and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

(3) Grading Plan. A grading plan shall be required for all projects that include grading. The plan shall limit all grading activities to the residential coverage area described in subsection (c)(1) of this section and any areas necessary to complete septic removal and sewer installation with one exception: sand to be excavated to accommodate the development may be placed outside of the residential coverage area, pursuant to the approved dune restoration plan described in subsection (c)(2) of this section, in a manner that replicates surrounding natural dune forms, provided that it is free of impurities or previously imported soil or fill material. The grading plan shall be accompanied by a determination by a qualified biologist or landscape professional that the placement of sand or changes to existing site contours outside of the residential coverage area, will support and enhance the restoration of natural habitat values, including avoiding direct impacts to sensitive plants. Any excess sands not used in conjunction with the native habitat restoration shall be made available for use within the Asilomar Dunes area of Pacific Grove.

(4) Post-Construction Runoff. A post-construction runoff plan, as described in PGMC [23.90.150](#), shall be completed in conjunction with the dune restoration plan described in subsection (c)(2) of this section and the project biologist to determine the best suited location for percolation pits and drain systems to avoid any adverse impacts on native dune restoration activities.

(5) Off-Site Dune Habitat Restoration Requirement. An off-site dune habitat restoration plan shall be required for any project that includes new dune coverage. The off-site dune habitat restoration plan shall provide for restoration of dune habitat within the Asilomar Dunes system at the ratio of 2:1 mitigation. In lieu of providing for restoration of off-site dune habitat, the plan may be submitted with evidence that a dune restoration payment has been deposited into an interest-bearing account to be established and managed by one of the following entities: the city of Pacific Grove, Monterey County, or the California Department of Parks and Recreation, for the sole purpose of financing dune habitat restoration and maintenance within the Asilomar Dunes system. The amount of the payment shall be equivalent to the current cost of dune restoration on a per square-foot basis. All of the funds and any accrued interest shall be used for the above-stated purpose within 10 years of the funds being deposited into the account. Any portion of the funds that remains after 10 years shall be donated to one or more of the state parks units located in the vicinity of the Monterey Peninsula, for the purpose of restoring and maintaining dune habitat. [Ord. 20-023 § 2, 2020].

23.90.180 Coastal community design.

(a) Objectives. In order to protect and maintain the city's unique natural setting and character, to promote orderly development, and to maintain consistency with the LCP's land use plan (LUP), development shall conform to all applicable LUP community design policies and the following design standards. All standards (including with respect to height, setbacks, density, coverage, etc.) shall be

interpreted as maximums (or minimums) that shall be reduced (or increased as applicable) to protect and enhance such resources and meet LCP objectives to the maximum extent feasible. Protection of coastal resources shall be a priority in all city actions and decisions, and development must conform to all applicable LCP policies related to hazards, water and marine resources, scenic resources, biological resources and environmentally sensitive habitat areas, cultural resources, and public access and recreation in addition to the following community design requirements.

(b) Land Use Designations. In order to protect priority land uses as defined by the Coastal Act, including recreation and visitor-serving and coastal-dependent uses for both Pacific Grove residents and visitors, development shall conform with all applicable land use plan land uses and designations policies and standards. For purposes of this implementation plan, all land use designations shall be consistent with the LUP land use designations and graphic containing the following:

- (1) Low density residential 1-2 DU/AC;
- (2) Mobile home park 8-10 DU/AC;
- (3) Medium high density residential 10-20 DU/AC;
- (4) Visitor-accommodation;
- (5) Visitor-serving commercial;
- (6) Sunset service commercial;
- (7) Open space institutional;
- (8) Open space recreational;
- (9) Recreation trail.

(c) Design standards for each land use designation are contained in the section below:

(1) Coastal Community Character Assessment. The applicant shall submit an assessment of the development proposal showing its characteristics in relation to the character of the existing surrounding and nearby built and natural environment. Where the assessment indicates that the proposed project is potentially out of character with the surrounding or nearby environment, the applicant shall provide an expanded assessment that extends out at least to all parcels within at least 150 feet of the project site. The expanded assessment shall include any relevant information deemed necessary by the city to determine whether the proposed development is

consistent with community character, which may include an evaluation and comparison of building heights, square footage, setbacks, lighting, lot sizes, lot coverage, landscaping, open space, or other features of the built and natural environment on parcels within 150 feet of the project site, or further if required by the city. All such assessments shall include a discussion of a range of design alternatives that could be utilized to achieve consistency with established community character in the area.

(2) Residential Design Standards. In addition to all other applicable LCP policies, the following design standards for development within low density residential, medium density residential, medium density residential mobile home park, and medium high density residential LUP land use designations (excluding the Asilomar Dunes residential area) shall apply:

(A) Coverage. Building and other site coverage shall be limited to the degree necessary to protect and maintain existing public views, maintain adequate open space to preserve small-scale visual landscapes, protect water quality (including by limiting impervious surfaces), and maintain community character, including thorough requirements for compact design, pervious materials, and maximized landscaping and open space. In no case shall building coverage exceed 50 percent of total lot area, and in no case shall site coverage exceed 60 percent of total lot area.

(B) Heights and Articulation. Building and other structure heights shall be limited to the degree necessary to maintain existing public views, pedestrian scale, and community character. For properties in the low density residential, medium density residential, and medium density residential mobile home park land use designations, structures shall not exceed 25 feet as measured from legally established existing grade. For properties located in the medium high density residential land use designation, structures shall not exceed 25 feet and the top plate line shall not exceed 24 feet as measured from legally established existing grade, except that residential development within Areas I and II in Figure 6 of the LUP may be allowed up to a maximum of 30 feet so long as public views are not significantly impacted. All heights shall be reduced as necessary to ensure that existing blue water views from public vantage points are maintained. For development that fronts on and/or is visible from Ocean View Boulevard or the recreational trail, story step-backs and building articulation shall be required to ensure that buildings and other structures do not dominate blue water ocean views from public vantage points, do not domineer over the public space, and do not appear as large, unarticulated flat planes. Exceptions to height limits may be allowed if deemed necessary as a hazard adaptation response to accommodate designated historic structures.

(C) Off-Street Parking. Off-street parking spaces shall be required in the number necessary to ensure that residential parking needs are provided on site and do not conflict with public parking needs, including for public coastal access. Factors to consider when determining off-street parking requirements include the size of the lot, proximity to the shoreline, and adequacy of public parking opportunities for public coastal access in the vicinity. In any case, for lots 2,701 square feet or greater, no less than one off-street parking space shall be required. For lots 2,700 square feet or less, off-street parking requirements may be waived so long as residential parking needs do not conflict with parking for public coastal access. Multi-family units shall have at no less than one and one-half spaces per unit.

(D) Setbacks. Setbacks from streets and property lines shall be applied in a manner designed to protect existing public views, maintain adequate open space to preserve small-scale visual landscapes and pedestrian scale, and maintain community character. For lots fronting Ocean View Boulevard, in no case shall front setbacks be less than 15 feet. For all other lots, in no case shall front setbacks be less than eight feet.

(E) Other. Residential development shall be sited and designed to maintain public views and community character, including through quality design, architectural articulation (including varied offsets and projections), and quality exterior materials and landscaping that respect and emphasize the natural setting and surrounding built environment.

(3) Asilomar Dunes Residential Area Design Standards. In addition to all other applicable LCP policies, the following design standards for development within the LUP's Asilomar Dunes residential area shall apply:

(A) Residential Development Envelope. Residential development within the Asilomar Dunes residential area shall be confined within a residential development envelope. The residential development envelope shall consist of the primary coverage area (as described in subsection (c)(3)(B) of this section) and the outside use area (as described in subsection (c)(3)(C) of this section). For purposes of all Asilomar Dunes residential area policies, "cover" and "coverage" and other like terms shall mean any development/use that is not open sand dune area devoted to dune habitat.

(B) Primary Coverage Area. The primary coverage area shall be limited to 15 percent of the total lot area. For purposes of calculating the primary coverage area, residential buildings and garages (excluding only roof eaves and similar architectural features that do not extend more than three feet over any dune area), driveways, patios, decks, and any other features that cover dune areas shall count as lot coverage for properties within the Asilomar Dunes

residential area. When calculating coverage, areas of dune that are not completely covered, but that are committed to non-dune use through siting and design of proposed development (e.g., areas between stepping stone pathways, areas between pathways and the house, etc.) shall also count as coverage.

(C) Outdoor Use Area. The outdoor use area shall be limited to a maximum of 750 square feet per lot; shall be located immediately contiguous to the primary coverage area; and shall be otherwise sited and designed to maximize dune protection on and off the site. The only purpose of the outdoor use area shall be to provide an area of dune within which typical outdoor residential activities can take place (e.g., BBQs, lounge chairs, etc.). The outdoor use area may include an unobtrusive perimeter fence; provided, that such fencing shall be limited to a maximum of six feet in height as measured from existing grade and shall allow for free passage of sand, seeds, and wildlife. The outdoor use area may be increased above the 750 square-foot maximum if the primary coverage area is reduced an equivalent amount.

(D) Restoration and Protection. As a condition of coastal development permit approval, all other areas of the lot outside of the residential development envelope shall be restored/enhanced and maintained in a natural dune condition within which the only allowed development, use, and activities are those associated with dune restoration/enhancement and protection. All dune restoration, enhancement, and protection areas shall be covered by both a dune restoration, enhancement and protection plan prepared by a qualified dune restoration professional, as well as a deed restriction or other similar legal restriction adhering to the property (i.e., a conservation easement, etc.) designed to limit allowed development, use, and activities in perpetuity to those associated with dune restoration, enhancement and protection.

(E) Fencing. Fencing and other such barriers shall be prohibited in the Asilomar Dunes residential area, with the exception of (i) outdoor use area perimeter fencing discussed in subsection (c)(3)(C) of this section, and (ii) when proven to be more protective of the dune habitat and visual landscape than the prohibition. Fencing, other than outdoor use area perimeter fencing, shall be limited to minimal symbolic fencing (e.g., post and single-cable fencing) that is required to protect native dune habitat and allows for free passage of sand, seeds, and wildlife.

(F) Heights and Articulation. Building and other structure heights shall be limited to the degree necessary to maintain public views of the dunes and ocean, maintain pedestrian scale, and maintain Asilomar Dunes character. Development that is visible from Sunset

Drive or the recreational trail shall not exceed 18 feet in height above legally established existing grade, and shall be designed to appear as one story from Sunset Drive or the recreational trail. Development on all other parcels shall not exceed 25 feet in height above legally established existing grade, and may be designed to appear as one or two stories, as long as impacts to public dune views are minimized to the maximum degree feasible.

(G) Off-Street Parking. Off-street parking spaces shall be required in the number necessary to ensure that residential parking needs are provided on site and do not conflict with public parking needs, including for public coastal access. Factors to consider when determining off-street parking requirements include the size of the lot, proximity to the shoreline, and adequacy of public parking opportunities for public coastal access in the vicinity. In any case, all such off-street parking shall only be accommodated within an enclosed and attached garage, and driveways shall be sited and designed to provide as direct access to the garage as possible.

(H) Setbacks. Setbacks from streets and property lines shall be applied in a manner designed to maintain public views of the dunes and ocean from public vantage points. The setbacks are necessary to maintain pedestrian scale, and maintain Asilomar Dunes character. All such setbacks shall take into account development on adjacent properties and shall be applied in a manner that maximizes dune contiguity overall. Setbacks shall be increased or, in some cases, decreased to the degree necessary to protect dunes and sensitive species, maintain public views, maintain open space, and be compatible with Asilomar Dunes character. Development shall be set back from Sunset Drive at least 75 feet, with the exception of driveways and mailboxes/address signs, which shall be sited and designed to limit their visibility as much as possible. For all other development, in no case shall street setbacks be less than 15 feet.

(I) Accessory Structures. Detached accessory structures (e.g., garages, carports, sheds, gazebos, etc.) are prohibited; all accessory structures must be attached to and/or be a part of the main residence.

(J) Off-Site Mitigation. In addition to the restoration requirements specified above, all areas of new dune coverage associated with development on legal lots of record in the Asilomar Dunes residential area shall be required to be mitigated on a 2:1 square foot basis by providing for off-site restoration or enhancement of degraded dune areas in the Asilomar Dunes area. This requirement may be addressed through off-site restoration/enhancement and/or proportionate contributions to the city's environmental assessment fund provided such funds are used only for dune restoration, enhancement, and protection efforts in the

Asilomar Dunes area. Development shall only be approved if the area in the public right-of-way between the lot frontage and the paved portion of the road is also restored/enhanced and maintained in a natural dune condition within which the only allowed development, use, and activities are those associated with dune restoration, enhancement and protection.

(K) Subdivisions. In order to maintain existing low densities necessary to protect coastal scenic and habitat resources, subdivisions which create additional building lots shall be prohibited.

(L) Nonconforming Development. Development associated with existing legal nonconforming residential development in the Asilomar Dunes residential area shall require that all development on the site be brought into conformance with LCP requirements, including with respect to lot coverage and dune restoration/protection requirements, if such development consists of either: (i) alteration of 50 percent or more of one or more of the residential development's major structural components (each measured separately); or (ii) alteration to such residential development that leads to a 50 percent or more increase in floor area; where all such alterations are measured cumulatively over time from March 11, 2020. Alterations that do not affect major structural components and do not increase floor area do not count towards the above conformance threshold.

Development associated with existing legal nonconforming residential development in the Asilomar Dunes residential area that does not reach the above conformance thresholds shall only be allowed if coverage remains the same or is reduced; there is no new coverage of existing dune habitat (whether degraded or not); all remaining dune habitat on the site is restored and permanently protected; and an offsetting area of off-site dune habitat is restored and maintained such that the total area that will be restored (i.e., on and off site) is equal to at least 85 percent of the total lot area.

(M) Conforming Development. Development associated with conforming Asilomar residential development shall only be allowed if the total site coverage remains at or below the maximum residential development envelope coverage allowed per the LCP; new coverage is located immediately adjacent to existing coverage areas and in the least sensitive area of the lot in terms of dune resources and public views; contiguous areas of dune habitat are not fragmented and, if feasible, made less fragmented; all remaining dune habitat is restored and permanently protected; no sensitive plants are disturbed; all areas of new coverage are mitigated at a ratio of 2:1.

(N) Other. Asilomar Dunes residential development shall be sited and designed to maintain public views of the dunes and ocean from public vantage points, maintain pedestrian scale, and maintain Asilomar Dunes character, including through siting and design that respects dune landforms, quality design, architectural articulation (including varied offsets and projections), low-slung structures that are subordinate to the dune setting and aesthetic, quality exterior materials, and dune restoration and enhancement that respect and emphasize open space and the natural setting.

(4) Visitor-Serving, Visitor-Accommodation and Sunset Service Commercial Design Standards. In addition to all other applicable LCP policies, the following design standards for development within the visitor-serving, visitor-accommodation and sunset service commercial LUP land use designations shall apply:

(A) Coverage. Building and other site coverages shall be limited to the degree necessary to maintain public views, maintain adequate open space to preserve small-scale visual landscapes, maintain water quality (including by limiting impervious surfaces), and maintain community character, including through requirements for compact design, pervious materials, and maximized landscaping and open space. In no case shall site coverage exceed 90 percent of total lot area. To the extent possible, any space remaining uncovered should be accumulated to maximize positive visual impacts and usability.

(B) Heights and Articulation. Building and other structure heights shall be limited to the degree necessary to maintain public views, maintain pedestrian scale, and maintain community character. In no case shall building and other structures exceed 40 feet as measured from existing grade, and all such heights shall be reduced as necessary to ensure to the maximum extent feasible that existing blue water views from public vantage points are predominantly maintained. For new development that fronts on and/or is visible from Ocean View Boulevard or the Ocean View Boulevard Recreational Trail, story setbacks and building articulation shall be required to ensure that buildings and other structures do not dominate blue water ocean views, do not domineer over the public space, and do not appear as large flat planes.

(C) Off-Street Parking. Off-street parking spaces for new development shall be required in the number necessary to ensure that both customer and employee parking needs are provided on site and do not conflict with public coastal access parking needs. Factors to consider when determining off-street parking requirements include the size of the lot, proximity to the shoreline, and adequacy of public parking opportunities for public coastal access in the vicinity.

(D) Setbacks. Setbacks from streets and property lines shall be applied in a manner designed to maintain public views, maintain adequate open space to preserve small-scale visual landscapes and pedestrian scale, and maintain community character. Where not occupied by structures, landscaping shall be placed in the front eight feet of the project site. Adjacent to residential uses, 10-foot setbacks shall be implemented.

(E) Public Access. New development shall ensure that existing public accessways are retained and enhanced with appropriate public access signage and amenities.

(F) Other. All new development shall be sited and designed to maintain public views and community character, including through quality design, architectural articulation (including varied offsets and projections), and quality exterior materials and landscaping that respect and emphasize the natural setting and surrounding built environment.

(G) American Tin Cannery Site. In addition to the standards in subsections (c)(4)(A) through (F) of this section, the following additional design standards apply to new development at the American Tin Cannery site located seaward of Sloat Avenue between Eardley Avenue and Dewey Avenue:

(i) Coverage. Site coverage may only be allowed up to 90 percent of the total site area if the project includes consistent public amenities that enhance public access (e.g., restrooms, bicycle racks, seating areas, sidewalk and roadway access improvements on and off site, etc.) beyond that which is required by the LCP for compliance with other requirements. Otherwise, site coverage may be decreased if substantial public coastal access amenities are not incorporated into the project.

(ii) Minor exceptions to height limits may be allowed for mechanical appurtenances up to an additional eight feet; provided, that no public views are significantly impacted and the equipment is appropriately screened.

(5) Open Space Recreational Design Standards. In addition to all other applicable LCP policies, the following design standards for development within the Ocean View Boulevard and Sunset Drive rights-of-way, and the open space recreational and open space institutional LUP land use designations shall apply:

(A) Structures and Coverage. Structures and coverage shall be minimized and allowed only for development that enhances public access and recreational uses or is necessary to provide essential public services. Commercial uses shall be restricted to existing or restored structures without the construction of new structures or the expansion of existing structures.

All development shall stay within areas of existing coverage to the maximum extent feasible and shall be sited and designed to maintain public views, protect public views to and along the ocean, maintain and enhance open space, limit impervious surfaces, and maintain community character. Utility and related infrastructure shall be sited underground if possible, and shall be screened from view and otherwise camouflaged if unavoidably sited above ground.

(B) Heights and Articulation. Building and other structure heights shall be limited to the degree necessary to maintain public views, pedestrian scale, and community character. In no case shall the height of new structures exceed 25 feet.

(C) Public Access. Development shall be sited and designed to ensure that public access to public lands and the Pacific Ocean is maximized as much as possible, and restrictions on access shall only be considered when required to protect access areas, including associated native flora and fauna, from overuse. Any allowable restrictions on public access shall be minimized and shall be offset (e.g., through opening up additional access areas) to the maximum extent possible.

(D) Public Parking. Development shall be sited and designed to maintain or enhance public parking, including the number of available public parking spaces, to the maximum extent feasible.

(E) Landscaping. Development shall minimize the removal of existing native vegetation, and shall provide for landscaping improvements that include removal of nonnative and/or invasive species, and plantings of noninvasive native plants in a manner sited and designed to enhance coastal habitats and public views.

(F) Other. All development shall be sited and designed to maintain public views and maintain community character, including through quality design, architectural articulation (including varied offsets and projections), and quality exterior materials and landscaping that respect and emphasize the natural setting and surrounding built environment.

(G) Design Standards for Asilomar Conference Grounds and Asilomar State Beach. The general standards listed above in subsections (c)(4)(A) through (F) of this section are not applicable. The following specific standards for development apply within the Asilomar Conference Grounds and Asilomar State Beach:

(i) Coverage. Building and other site coverage within the Asilomar Conference Grounds and Asilomar State Beach shall be minimized to the maximum extent feasible. All new

and expanded facilities shall be restricted to existing areas of coverage if possible, and where not possible shall be located outside of the most sensitive areas. New coverage areas shall not be located further seaward than the general edge of the existing main developed areas at Asilomar Conference Grounds (e.g., the general seaward edge roughly running along the Grand Cypress Meadow, Parking Lot L, and the Surf, Sand, Seascape, and Sanderling buildings). All areas of new coverage shall be offset on at least a 3:1 basis by the removal and restoration of areas of existing coverage elsewhere within the Asilomar Conference Grounds and/or State Beach and/or elsewhere within the Asilomar Dunes area, with a preference for locations as near as possible to the area of impact unless other areas would provide more resource improvement overall (e.g., due to restoration priorities, contiguity with other resource areas, coordination with other restoration efforts, etc.). Where such restoration does not fully mitigate the impact and there are no other appropriate areas to restore, the requirement may be addressed through proportionate contributions to the city's environmental assessment fund provided such funds are used for dune restoration, enhancement, and protection efforts in the Asilomar Dunes area. All development shall be limited to the degree necessary to protect dunes and sensitive species, maintain public views (including public views to and along the ocean and shoreline), maintain adequate open space to preserve small-scale visual landscapes and pedestrian scale, and maintain site and Asilomar Dunes character.

(ii) Heights. Building and other structure heights shall be limited as necessary to maintain public views, maintain pedestrian scale, and be consistent with site and Asilomar Dunes character. In no case shall the height of new buildings exceed 25 feet. Restored, replacement, or expanded buildings shall be limited to existing building heights. Maximum building heights shall be reduced as necessary to ensure that existing blue water views from public vantage points are maintained or enhanced as much as possible.

(iii) Parking. Development shall be required to maintain or enhance public parking, including the number of available spaces, to the maximum extent feasible. Reductions in parking shall only be approved if it is determined that adequate parking is provided in other locations within the conference grounds.

(iv) Public Access. Development shall be sited and designed to ensure that existing public access and recreation areas remain open and available to the public unless limitations on such access are necessary to protect dunes and the habitat of rare and endangered species from overuse.

(v) Landscaping. Development shall minimize the removal of existing native vegetation and forest. Development shall provide for landscaping improvements that include removal of nonnative and invasive species, and plantings of noninvasive native plants, including plantings of nursery stock trees grown from site-specific stock.

(vi) Other. All development shall be sited and designed to maintain public views of the dunes and ocean, maintain pedestrian scale, and maintain Asilomar Dunes character, including through siting and design that respects dune landforms, quality design, architectural articulation (including varied offsets and projections), low-slung structures that are subordinate to the dune setting and aesthetic, quality exterior materials, and dune restoration and enhancement that respect and emphasize open space and the natural setting.

(vii) Management Plan. State parks shall coordinate with the city and other stakeholders (e.g., Coastal Commission, Monterey County, National Oceanic and Atmospheric Association (Monterey Bay Sanctuary), Bureau of Land Management (California Coastal National Monument), the California Department of Fish and Wildlife, the California State Lands Commission, Pebble Beach Company, etc.) to develop a comprehensive management plan to guide future use, management, and development of the Asilomar Conference Grounds and Asilomar State Beach. The management plan shall develop options for addressing coastal hazards, preserving historic structures, restoring and protecting native forest and dune habitat, removing and controlling nonnative and/or invasive vegetation utilizing integrated pest management methods, and enhancing and maximizing public access and recreational opportunities on the site.

(H) Design Standards for Hopkins Marine Station. The general standards listed in subsections (c)(4)(A) through (F) of this section are not applicable. The following specific standards for development within the Hopkins Marine Station located seaward of Ocean View Boulevard between Eardley Avenue and Third Street shall apply:

(i) Coverage. Building and other coverage within Hopkins Marine Station shall be limited to the degree necessary to maintain public views, maintain adequate open space to preserve small-scale visual landscapes and pedestrian scale, protect water quality (including by limiting impervious surfaces), and maintain community character, including through requirements for compact design, pervious materials, and maximized landscaping and open space. All new and expanded facilities shall be restricted to existing areas of coverage if possible, and where not possible shall be located inland of the existing main developed areas and outside of the most sensitive areas. New

coverage shall be offset on at least a 1:1 basis with the removal of coverage and restoration of those areas elsewhere within Hopkins Marine Station. All development shall be limited to the degree necessary to protect sensitive species, maintain public views, maintain adequate open space to preserve small-scale visual landscape, and maintain site and community character.

(ii) Heights and Articulation. Building and other structure heights shall be limited to the degree necessary to maintain public views to and along the ocean and shoreline, maintain pedestrian scale, and maintain site and community character. To preserve public views, new development shall be sited and designed in a manner that maintains view corridors to the water and does not extend above the silhouette of existing buildings. New development shall not exceed the maximum height of the Agassiz building. Exceptions to the height limit may be allowed if deemed necessary as a hazard adaptation response to accommodate designated historic structures, to protect environmentally and culturally sensitive areas, and/or to maintain existing public views while ensuring Hopkins Marine Station's educational and research mission.

(iii) Off-Street Parking. Off-street parking spaces shall be required in the number necessary to ensure that parking needs do not conflict with public parking needs, including for public coastal access. Development shall be required to maintain existing on-site parking spaces, and reductions in on-site parking shall only be approved if it is determined that adequate parking is provided in other locations and such reductions do not impact public parking spaces off-site.

(iv) Setbacks. Setbacks shall be applied in a manner designed to maintain public views to and along the ocean, avoid hazardous areas, maintain adequate open space to preserve small-scale visual landscapes and pedestrian scale, and maintain site and community character.

(v) Public Access. Significant development (e.g., replacement of 50 percent or more of existing development on the site on an individual or cumulative basis or construction of substantial new structures) shall be required to provide enhanced vertical, lateral, and/or visual public access. Enhanced lateral and vertical access includes, but is not limited to, providing a means for the general public to access the immediate shoreline in a way that maximizes public utility while protecting sensitive coastal resources and does not conflict with the educational and research mission of the Hopkins Marine Station. Enhanced visual access includes, but is not limited to, removal of the existing chain-link property line fence along Ocean View Boulevard and other visual barriers to the

shoreline and ocean, and, if some form of fencing/barrier is found to be necessary, replacement with one that is low profile, protects wildlife, and can blend seamlessly into the surrounding viewshed. Any such replacement fencing/barrier must provide protection of harbor seals from human activities comparable to the existing chain-link fence.

(vi) Landscaping. Development shall minimize the removal of existing native vegetation. Development shall provide for landscaping improvements that include removal of nonnative and/or invasive species, and plantings of noninvasive native plants, where revegetation can occur without adverse impacts to archaeological resources.

(vii) Other. All development shall be sited and designed to maintain public views of the shoreline and ocean, maintain pedestrian scale, and maintain site and community character, including through siting and design that respects the natural landforms, quality design, architectural articulation (including varied offsets and projections), low-slung structures that are subordinate to the shoreline setting and aesthetic, quality exterior materials, and other means that respect and emphasize open space and the natural setting.

(viii) Management Plan. Hopkins Marine Station shall coordinate with the city to develop a comprehensive management plan to guide future use, management and development of the entire site. The management plan shall develop options to address coastal hazards, to restore and protect native habitat, to remove and control nonnative and/or invasive vegetation utilizing integrated pest management methods, and to provide increased and enhanced public vertical, lateral, and visual access to the site, shoreline and ocean. The plan shall require a CDP and be periodically reviewed and updated at least once every 10 years. [Ord. 20-023 § 2, 2020].

23.90.200 Cultural resources.

(a) In order to protect the city's archaeological and historic resources, and to maintain consistency with the LCP's land use plan (LUP), development shall conform to all applicable LUP cultural resources policies and the following requirements.

(b) Applications for Development Potentially Affecting Cultural Resources. The following documentation and requirements shall be provided for all CDP applications that may impact cultural resources:

(1) Archaeological Report. Due to the archaeological sensitivity of the entire Pacific Grove Coastal Zone, an archaeological report for projects that include soil disturbance shall be

prepared by a qualified archaeologist prior to approval of the project. Landscaping that does not involve construction of structures or changes to the site contours greater than one foot are exempt from this requirement. At a minimum, the archaeological report shall include the following:

- (A) Site information including location, parcel number, address, owner, applicant, parcel size, location of structures or improvements, and applicable maps;
- (B) Review of relevant scientific literature or past archaeological reports describing archaeological resources on the site or on adjacent lands;
- (C) Searches of the California Historical Resources Information System and Native American Heritage Commission Sacred Lands File;
- (D) Documentation of consultation with appropriate tribes as required by state law;
- (E) Date and findings of a preliminary archaeological reconnaissance;
- (F) Discussion of potential adverse impacts on archaeological resources;
- (G) Recommendations for further archaeological surveys, if deemed to be necessary; and
- (H) Recommended mitigation, minimization, and/or avoidance measures to compensate for potential impacts to significant archaeological resources, including description of alternative designs for the proposed project (if any are proposed) and how alternative designs relate to the archaeological resources on the site and alternative design impacts compare to those of the project.

(2) Historic Resources Report. For new projects that include demolition or alterations to potential historical resources, a historical assessment report prepared by a qualified professional is required prior to approval of the project. The lead author must meet the Secretary of the Interior's professional qualifications standards ([36 CFR Part 61](#)) in history or architectural history. At a minimum, the historical assessment report shall include the following:

- (A) Detailed description of the historical resources at the project site.
- (B) Discussion of potential adverse impacts on historical resources from the project.
- (C) Recommended mitigation, minimization, and/or avoidance measures to protect historical resources, including description of alternative designs for the proposed project (if any are

proposed) and how alternative designs relate to the historical resources on the site and alternative design impacts compare to those of the project. [Ord. 20-023 § 2, 2020].

23.90.210 Public infrastructure.

(a) In order to protect and provide public infrastructure within the city's coastal zone, and to maintain consistency with the LCP's land use plan (LUP), development shall conform to all applicable land use plan public infrastructure policies and the following requirements.

(b) Applications for Development Potentially Affecting Public Infrastructure. The following documentation and requirements shall be provided for the following applications:

(1) Water Supply and Conservation Plan. For projects that will cause an increase in water use over existing uses, a water supply and conservation plan is required. At a minimum, the plan must include the following:

(A) Documentation confirming that the development will be served by an adequate existing water allocation and sustainable long-term water supply.

(B) Water conservation plan that maximizes the use of water conservation fixtures, equipment, and landscaping. Water conservation features may include, but are not limited to, high-efficiency washing machines and dishwashers, recirculation pumps, low-flow showerheads, shower shut-off valves, faucet aerators, on-demand hot water heaters, high-efficiency low-flow toilets, xeriscape landscaping, drought-tolerant plants, and reclaimed water and captured storm water for irrigation.

(2) Temporary Traffic Handling Plan. For public works and private construction projects that result in reduction of traffic capacity during peak summer months, for more than one week, or for special events that result in an increase in traffic of 25 percent or more over average hourly traffic volumes, a temporary traffic handling plan is required. At a minimum, the plan must include the following:

(A) Identification, timing, and duration of all traffic, parking, and pedestrian walkway closures.

(B) Identification of alternative routes for vehicular and pedestrian traffic. The plan shall ensure that public access to coast and adequate public parking is maintained.

(C) For special events that result in an increase in traffic of more than 35 percent over average hourly traffic volumes, the plan shall include shuttles from off-site parking areas and

bicycle parking services. [Ord. 20-023 § 2, 2020].

23.90.220 Parks, recreation, and public access.

(a) In order to protect the public's access to the coastal zone including for recreation, tourism and appreciation and study of the natural environment, and to maintain consistency with the LCP's land use plan (LUP), development shall conform to all applicable land use plan parks, recreation, and public access policies and the following requirements.

(b) Applications for Development Potentially Affecting Public Access. The following documentation and requirements shall be provided for the following applications:

(1) Paid Public Parking Program. The establishment of a paid public parking program or changes to an existing program (e.g., changes in hours, locations, rates, etc.) shall require a CDP. At a minimum, applications must include the following:

(A) Identification of the location, hours, and rates of paid public parking.

(B) Analysis of potential impacts of paid parking on coastal access; including the availability of free parking at other coastal locations, alternative access opportunities such as bike lanes and public transit.

(C) Establishment of a dedicated fund where all parking fees will be held and utilized solely to improve and enhance coastal access and recreation opportunities.

(2) Temporary Public Access Impacts. Development that has the potential to temporarily impact coastal access, including construction impacts or the temporary placement of any sign that could reduce public coastal access, shall require a CDP and development of a public access management plan. At a minimum, the plan must include the following:

(A) Identification of the locations, times, and types of closures and/or limitations to existing public access and/or recreational opportunities.

(B) Documentation regarding the necessity of any closures and/or limitations (e.g., avoid overuse, protect biological resources, maintain water quality, etc.).

(C) Mitigation measures to avoid and/or limit impacts to public access including avoidance of peak use times (typically weekends and Memorial Day to Labor Day), minimizing road and trail closures by using phased construction schedules and use of private areas for staging, and providing alternative access through the creation of temporary accessways or placement of alternative access signage.

(D) Temporary events shall also include additional strategies to avoid impacts to public parking and access, including use of traffic handlers, parking attendants, shuttles from off-site locations, bike valet programs, and/or directional/parking signs.

(3) Permanent Public Access Impacts. Development that has the potential to permanently impact coastal access, including in terms of limitations of use hours, limitations on particular recreational activities, or increased traffic leading to impacts to public access use of the city's circulation system, shall require development of a public access management plan. At a minimum, the plan must include the following:

(A) Identification of the locations, times, and types of all closures and/or limitations to existing public access and/or recreational opportunities.

(B) Documentation regarding the necessity of any closures and/or limitations (e.g., avoid overuse, protect biological resources, maintain water quality, etc.).

(C) Analysis of potential impacts to coastal access; including the availability of alternative access and recreation opportunities at other coastal locations.

(D) Mitigation measures to avoid and/or offset impacts to public access, including providing additional and/or enhanced public access improvements in other locations and/or additional low-cost recreational opportunities.

(E) Private development projects (e.g., visitor-serving development) shall provide for public access enhancements and improvements both on and off-site as much as possible.

(c) Lower Cost Visitor Accommodations; Protection of Low Cost Visitor Accommodations.

(1) Low, Moderate, and High Cost Visitor Accommodations Defined. For purposes of this subsection, visitor accommodations shall be defined as low, moderate, or high cost as follows:

(A) Low Cost. The annual average daily room rate of all economy hotels and motels in the city of Pacific Grove market area that have room rates that are equal to or below the statewide average daily room rate. Economy hotels and motels are AAA-rated one or two diamond hotels, or equivalent.

(B) Moderate Cost. The average daily room rate is between low cost and high cost.

(C) High Cost. The average daily room rate is 120 percent of the statewide average daily room rate or greater.

(2) Feasibility Analysis Required. An analysis of the feasibility of providing lower cost visitor accommodations shall be required for any application involving the expansion, reduction, redevelopment, demolition, conversion, closure, cessation, or new development of any project involving visitor overnight accommodations, with the exception of short-term rental lodging that is within residential units. If the proposed rates are not lower cost, the feasibility study shall explain why providing lower cost accommodations as part of the project is not feasible, or whether the proposed project includes amenities that would serve as a lower cost option for families (e.g., additional beds per unit, suite facilities, kitchen facilities, etc.). This explanation shall address the land value; development costs; a breakdown of the estimated annual revenues (including average daily rate and occupancy rates); a breakdown of the estimated operating costs; and any other information necessary to address the feasibility of providing lower cost accommodations on site. The feasibility analysis shall be prepared at the applicant's expense.

(3) In-Lieu Fee Program. Specific detailed information regarding calculation and use of any required in-lieu fees as part of a mitigation program for project impacts to the availability of lower cost visitor accommodations within the city shall be included as a condition of approval of the coastal development permit for the visitor accommodations. Fees shall be adequate to cover the cost of mitigation proportionate to the impact of the development for which the CDP is issued. All in-lieu fee payments shall be deposited into a fund established by the city which shall be in an interest-bearing account and shall only be used for the provision of new lower cost overnight accommodations, within the city. Funds may be used for activities including land acquisition, construction, and/or renovation that will result in additional lower cost visitor accommodations, as well as permitting costs. The specific lower cost requirements for any project funded by the in-lieu fee program shall be determined through the coastal development permit process of the in-lieu fee funded project.

(4) Impact Analysis Required. An analysis of a development's impact on the availability of lower cost overnight visitor accommodations in the city shall be required for any application involving:

(A) The expansion, reduction, redevelopment, demolition, conversion, closure, or cessation of any project involving overnight visitor accommodations, with the exception of short-term lodging that is within residential units; or

(B) New or limited use overnight visitor accommodations, including timeshares, fractional ownership, or condominium-hotels.

The impact analysis shall be prepared at the applicant's expense.

(5) Impact Defined. The proposed development would result in any loss in the available supply of existing lower cost visitor accommodations, or would fail to provide lower cost rooms where new accommodations are proposed, or fail to use land suitable for lower cost accommodations for that purpose.

(6) Mitigation. If the review authority determines that the development will impact existing lower cost visitor-serving accommodations, or provide only high or moderate cost visitor accommodations or limited use overnight visitor accommodations such as timeshares, fractional ownership and condominium-hotels, then mitigation commensurate with the impact shall be provided as follows:

(A) Where development proposes to remove existing lower cost accommodations or replace existing lower cost accommodations with high cost accommodations, replacement of the lost low cost rooms shall be maximized and provided at least on a one-to-one ratio either on site or a suitable off-site location within the city. Where development proposes to remove existing lower cost accommodations or replace existing lower cost accommodations with moderate cost accommodations replacement of lost low cost rooms shall be maximized and provided at a ratio commensurate with the identified impact, taking into consideration the proposed cost increase and any additional amenities that would be provided to serve as a lower cost option for families. Replacement shall prioritize providing for lower cost accommodations on-site where feasible; where on-site provision is not feasible, off-site provision shall be completed and ready for use prior to occupancy of the new development, as feasible.

(B) Where development proposes to provide for new higher cost accommodations, the number of lower cost accommodations provided shall be maximized. At a minimum, the number of low cost units shall be equivalent of 25 percent of the number of high cost accommodations.

(C) Where it is not feasible to provide all lower cost accommodations as required on site, an equivalent combination of on site, off site, and payment of an in-lieu fee, as described under the in-lieu fee program above, commensurate with the impact shall be provided.

(7) Rate Control and Income Eligibility Requirements Prohibited. In no event shall a development as mitigation be required:

(A) To provide overnight room rental be fixed at an amount certain; or

(B) To establish any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

(8) Protection of Short-Term Rentals (Short-Term Lodging). Most short-term lodging units meet the low cost definition when maximum occupancy is taken into account. Short-term lodgings can accommodate more people than a typical hotel room. They also provide full-sized, equipped kitchens allowing families or larger groups to reduce the overall cost of a visit by allowing them to prepare meals as an alternative to dining out. The city shall continue to allow short-term lodgings in residential units as a means of providing lower cost overnight visitor accommodations while continuing to prevent conditions leading to increased demand for city services and adverse impacts in residential areas and coastal resources. Short-term rentals shall be subject to the following standards:

(A) Short-term rentals shall be limited to one per legal parcel and 55-foot zone of exclusion. The zone of exclusion is the distance of 55 lineal feet from an existing short-term rental parcel boundary.

(B) Short-term rentals shall not be used for auctions, commercial functions, or other similar events.

(C) Overnight occupants (aged 18 or older) are limited to two persons per bedroom, plus one additional person per site. The maximum number of daytime (non-overnight) occupants is limited to one and one-half times the number of overnight occupants. Occupants of short-term rentals shall have access to any on-site parking, if available. [Ord. 20-023 § 2, 2020].

The Pacific Grove Municipal Code is current through Ordinance 21-008, passed April 7, 2021.

Disclaimer: The City Clerk's office has the official version of the Pacific Grove Municipal Code. Users should contact the City Clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: <https://www.cityofpacificgrove.org/>

City Telephone: (831) 648-3100

[Code Publishing Company](#)

EXHIBIT C

Stephen L. Vagnini
Monterey County Clerk-Recorder

Recorded at the request of:
CHICAGO TITLE SALINAS - 50 W

2021037559

05/26/2021 10:21:11
Titles: 1 Pages: 3

Fees: \$19.00
Taxes: \$2750.00
AMT PAID: \$2769.00

RECORDING REQUESTED BY:
Chicago Title Company

**When Recorded Mail Document
and Tax Statement To:**
Phillip G Svalya and Karina Renee Svalya
10455 Torre Avenue
Cupertino, CA 95014

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Escrow Order No.: FWMN-5252100065

Property Address: 1135 Ocean View
Boulevard,
Pacific Grove, CA 93950
APN/Parcel ID(s): 006-021-013

GRANT DEED

The undersigned grantor(s) declare(s)

- This transfer is exempt from the documentary transfer tax.
 - The documentary transfer tax is \$2,750.00** and is computed on:
 - the full value of the interest or property conveyed.
 - the full value less the liens or encumbrances remaining thereon at the time of sale.
- The property is located in **the City of Pacific Grove.**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

William L. Hobbs and Susan R. Hobbs, Trustees of THE HOBBS FAMILY LIVING TRUST Agreement
dated May 22, 1991

hereby GRANT(S) to

Phillip G Svalya, a married man as his sole and separate property, as to an undivided 90% interest and
Karina Renee Svalya, a single woman, as to an undivided 10% interest, as Tenants in Common

the following described real property in the City of Pacific Grove, County of Monterey, State of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

PROPERTY COMMONLY KNOWN AS: 1135 Ocean View Boulevard, Pacific Grove, CA 93950

MAIL TAX STATEMENTS AS DIRECTED ABOVE

GRANT DEED
(continued)

APN/Parcel ID(s): 006-021-013

Dated: May 25, 2021

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

William L. Hobbs and Susan R. Hobbs, Trustees of THE HOBBS FAMILY LIVING TRUST Agreement dated May 22, 1991

BY: William L. Hobbs
William L. Hobbs, Trustee

BY: Susan R. Hobbs
Susan R. Hobbs, Trustee

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of MONTEREY

On May 25, 2021 before me, FRANCESCA AIELLO, Notary Public,
(here insert name and title of the officer)

personally appeared William L. Hobbs and Susan R. Hobbs
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Francesca Aiello
Signature

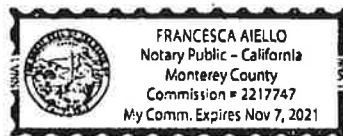


EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 006-021-013

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF PACIFIC GROVE, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lot 2, in Block 270, as shown on that certain map entitled, "Map of Resubdivision of Blocks 270 to 275 inclusive, also Blocks 286 to 295 inclusive, Pacific Grove Beach", filed July 21, 1926 in Volume 3, Maps of "Cities of Towns", at Page 34, in the Office of the County Recorder of the County of Monterey, State of California.

MAY 26 2021

When embossed this is certified to be a true copy of the records of the Monterey County Recorder's Office.
Stephen L. Vagnini, Recorder

By  Deputy

PROOF OF SERVICE

The undersigned declares:

I am employed in the City of Pacific Grove and County of Monterey, State of California. I am over the age of 18 and am not a party to the within action; my business address is c/o De Lay & Laredo, 606 Forest Avenue, Pacific Grove, CA 93950. On June 14, 2021, I served the foregoing:

MOTION FOR JUDICIAL NOTICE IN SUPPORT OF CITY OF PACIFIC GROVE'S COMBINED RESPONDENTS' BRIEF AND CROSS-APPELLANTS' OPENING BRIEF

on the following to the within action as follows:

SCHARF-NORTON CENTER FOR CONSTITUTIONAL
LITIGATION AT THE GOLDWATER INSTITUTE
Timothy Sandefur
Christina Sandefur
500 East Coronado Road
Phoenix, Arizona 85004
litigation@goldwaterinstitute.org

(BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through the electronic mail system from robin@laredolaw.net to the email addresses set forth above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

The Honorable Lydia M. Villarreal
The Superior Court of California
County of Monterey – Department 13
1200 Aguajito Road
Monterey, CA 93940

(BY MAIL) By placing such envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at De Lay & Laredo, Pacific Grove, California following ordinary

business practice. I am readily familiar with the practice being that in the ordinary course of business; correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this was executed on June 14, 2021.

/s/ Robin Rakouska
Robin Rakouska