

## Brandt-Hawley Law Group

Chauvet House • PO Box 1659  
Glen Ellen, California 95442  
707.938.3900  
[preservationlawyers.com](http://preservationlawyers.com)

November 9, 2020

Honorable Justin Cummings, Mayor  
and Members of the City Council  
City of Santa Cruz  
via email [citycouncil@cityofsantacruz.com](mailto:citycouncil@cityofsantacruz.com)

Subject: Item 28, Agenda November 10, 2020  
Santa Cruz Wharf Master Plan and Environmental Determination  
(ED/PL/PR)

Dear Mayor Cummings and City Councilmembers:

On behalf of *Don't Morph the Wharf!* I respectfully request that the Council deny the certification of the EIR and deny approval of the proposed Wharf Master Plan. My client joins in the concerns presented by concerned citizens and environmental groups as well as the California Coastal Commission and a number of Commissioners appointed to the city's Parks and Recreation Commission, Planning Commission, and Historic Preservation Commission. Elements of the Wharf Master Plan would have significant environmental impacts. It can and should be revised to reduce or avoid them. Particularly important revisions to the Plan include mitigations provided by the *Secretary's Standards*, elimination of the Western Walkway, elimination of the Landmark Building, and reduction in the height of other new buildings to 30 feet.

Although involved in environmental matters in Santa Cruz in the past, I have not appeared before the members of this Council. By way of introduction, my law practice focuses on public interest law and particularly on the application of CEQA to protect California's unique historic resources. Among published environmental decisions litigated by this office on behalf of public-interest groups are *Sierra Club County of Fresno*, *Friends of the College of San Mateo Gardens v. San Mateo County Community College District*, *Friends of Sierra Madre v. City of Sierra Madre*, and *Berkeley Hillside Preservation v. City of Berkeley*, all at the California Supreme Court, and *Architectural Heritage Association v. County of Monterey*, *Preservation Action Council v. City of San José*, *Galante Vineyards v. Monterey Peninsula Water Management District*, *Lincoln Place Tenants Association v. City of Los Angeles*, *League for Protection v. City of Oakland*, *Stanislaus Natural Heritage Project v. County of Stanislaus*, *The Pocket Protectors v. City of Sacramento*, and *Sierra Club v. County of Sonoma*, in the California Court of Appeal.

**The EIR Is Inadequate.** Many commentors on the EIR, including *Don't Morph the Wharf!*, have raised significant issues that need not be repeated here. I will address three of many important points, emphasizing the need to honor and fulfill the Master Plan's recognition of "*the importance of the Wharf as a visual and historic landmark.*"

**Aesthetic Impacts.** An overriding substantial inadequacy of the Wharf Master Plan EIR is its inadequate analysis, mitigation, and acknowledgement of significant aesthetic impacts. As noted by the California Coastal Commission's comment letter A-2:

Coastal Act Section 30251 requires that new development protect the scenic and visual qualities of coastal areas. This section also requires that new development protect views to and along the ocean and coastal areas and be visually compatible with the character of surrounding areas. The Master Plan includes buildings that are much larger in scale and footprint than existing Wharf buildings, which raises concerns regarding Wharf aesthetics and views of the Wharf as seen from a variety of vantage points ... the City should ... describe the rationale for why buildings should be increased in size from their current volumes and how this will affect the views and aesthetics of the Wharf.

The CEQA Guidelines contain an "Appendix G" that provides "*sample questions*" for public agencies' convenient use as an Initial Study checklist to assist in deciding whether a project must be subject to an EIR process. The "Note" provided at the outset of Appendix G states that "Substantial evidence of potential impacts that are not listed on [the Appendix G suggested checklist] must also be considered;" the checklist cannot conclusively set "thresholds of significance." This is consistent with *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

Yet the Agenda Report states that amendments to the CEQA Guidelines "changed the standard of review" for measuring project impacts to the visual character of an urban area. The EIR and Agenda Report apparently presume, without explaining why, that Santa Cruz need only consider aesthetic impacts that "conflict with applicable zoning and other regulations governing scenic quality" per Appendix G, section I subdivision (c). (Agenda Report at 13.) This is incorrect. In fact, Public Resources Code section 21001, subdivision (b) *protects 'aesthetics' separately from 'scenic' and 'historic' resources*. The only restriction on EIR review of aesthetics is codified in Public Resources Code section 21099 and the Wharf Master Plan does not qualify under that section. The EIR does not claim otherwise.

The aesthetics analysis in the EIR is inadequate and conclusory, as is its conclusion that the proposed new Wharf projects have no significant impacts because they are not "of such a scale or intervention that the Wharf would no longer be

considered an important visual feature of Santa Cruz.” That is not the standard. Rather, the question is whether changes to the Wharf and its surroundings contemplated by the Plan would have significant visual/ aesthetic impacts within its unique historic context.

The EIR’s responses to comments regarding aesthetics are also inadequate, including the statement that proposed new buildings would have no significant aesthetic impacts because the zoning does not prohibit them. Instead, the Wharf Master Plan, including the proposed 40-foot buildings, requires multiple discretionary approvals and environmental impacts must be measured — and feasibly mitigated — from the existing baseline. As another commentor fairly pointed out: “Not only would the new buildings stick out compared to the existing building and significantly impact views from the surrounding area, but they would change the existing aesthetic character of the Wharf by creating a jarring alteration of its skyline.”

**Recreational Impacts.** As also noted by the Coastal Commission’s EIR comment letter, projects proposed by the Wharf Master Plan must comply with Coastal Act policies. “With the Wharf and its proposed improvements extending over public lands and tidelands, the Coastal Act’s requirements that new development maximize public access and *recreation* become paramount.” One recreational resource — subject to CEQA review but which the EIR and the city’s proposed CEQA findings fail to acknowledge as significant — is the popular “sea lion viewing” holes that would be eliminated by the proposed Landmark Building. The Agenda Report states that “[s]taff has not proposed any wholesale changes or deletions from the Wharf Master Plan, but has included clarifying statements and commitments for additional public process and preservation of *cherished resources* like the ‘sea lion viewing’ holes and fishing access.”

The Agenda Report then recommends that the Wharf Master Plan direct that “[a]ny potential development at the end of the Wharf shall preserve to the greatest extent possible, or relocate to a place of greater access and viewing quality, the popular ‘sea lion viewing’ ... holes at the end of the Wharf. Any redesign of these features must be in keeping with the intimate experience of the current viewing holes and consistent with the character of the Wharf, as established through community engagement.”

The staff’s recommendations are insufficient. Due to significant impacts to recreation, the EIR must be revised to analyze mitigation measures and alternatives to destruction of the sea lion viewing holes. There is no way to “preserve” the viewing holes within the design of the Wharf Master Plan as currently proposed and the time for analysis is now. The EIR cannot legally defer study by vaguely directing feasible relocation “to a place of greater access” to the sea lion population and “greater reviewing quality” — that may or may not exist. The EIR must be revised to identify mitigation measures and alternatives unless the Landmark Building is eliminated.

**Historic Resource Impacts.** Important parts of the Historic Preservation Commission’s feasible recommendations to mitigate significant impacts are not supported by city staff. In important part, the Agenda Report states: “*Not to discount the value that historic review and input may have in achieving the goal of a Wharf more aligned with its historical character, staff is concerned about Historic Alteration Permit reviews leading to late stage modification of plans for public improvements and corresponding costs that might inflate the expense of public improvements to the Wharf.*” (Agenda Report at 9.) As this concern can easily be met, the Commission’s proposed mitigation is feasible.

To forestall important Commission input occurring too late in the process, early consultation could be added to a revised Wharf Master Plan — in a well-defined way — while also requiring Historic Alteration Permits for all wharf projects to assure, among other things, *full compliance* with the flexible, well-regarded *Secretary’s Standards*. Responses to comments underscore that the “massing, height, and footprint of the Landmark Building,” for example, may be modified as the EIR is programmatic rather than project-specific. Early review by the Commission would be an important foundation for project-level review. In addition, EIR section 4.3 should be revised to discuss compliance with the *Standards* — now — as anticipated by CEQA Guideline section 15126.5 (b)(1). The EIR states that the Plan *appears* to meet the *Standards* but *does not explain how*. It should be revised to do so; enough is already known about the proposed site configuration to make such review meaningful.

Substantial transformative alterations to the 100-year old wharf and 50+ year old buildings would have significant impacts to historic resources, aesthetics, cultural resources, biology, and recreation, as commentors have explained. The *Standards* must be applied because they are feasible mitigations recognized and supported by CEQA.

**CEQA Findings are Unsupported.** The aesthetic, historic, and recreational impacts of the Master Plan would be significant. Proposed findings to the contrary are unsupported. Further, an alternative that eliminates the Western Walkway and the Landmark Building and reduces the height of new construction to 30 feet is feasible, meets fundamental project objectives, and would reduce or avoid significant impacts as mandated by CEQA. There is no substantial evidence to the contrary. The Wharf Master Plan must be revised and recirculated to further address these issues, acknowledge significant impacts, and identify and impose feasible mitigations and alternatives.

Thank you.

Sincerely,



Susan Brandt-Hawley