

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



F8a

Prepared November 1, 2019 (for November 15, 2019 hearing)

To: Coastal Commissioners and Interested Persons

From: Dan Carl, Central Coast District Director
Kevin Kahn, Central Coast District Supervisor
Brian O'Neill, Central Coast District Coastal Planner

Subject: City of Pacific Grove Local Coastal Program Amendment Number LCP-3-PGR-18-0093-1 (LUP Update and IP Certification)

SUMMARY OF STAFF RECOMMENDATION

The City of Pacific Grove is proposing to completely update its Land Use Plan (LUP), originally certified in 1989, and is proposing an LCP Implementation Plan (IP) for the first time, which would result in a complete certified LCP for the first time for the City of Pacific Grove and the transfer of review authority for most types of coastal development permits (CDPs) to the City. The proposed newly completed LCP represents a comprehensive update that essentially replaces the majority of the 1989 LUP's original land use regulatory policies and programs. Although the broad goals of the 1989 LUP generally remain applicable (including the protection of Pacific Grove's unique public shoreline and small town character), the proposed LCP contains numerous updated and new policies, including to address a variety of coastal resource issues not covered in the 1989 LUP, as well as to reflect new understandings and improved planning techniques regarding various coastal resource concerns (including related to sea level rise, flood and hazard abatement, environmentally sensitive habitat areas (ESHA), wetland protection, water quality enhancement, and tribal/archaeological protections).

The City has put forth a considerable effort over the past several years to solicit public input and prepare and submit the proposed LUP update and the new IP, including with substantial grant funding from the Commission, and City staff has worked closely with Commission staff on all aspects of the proposed LCP throughout the entire process. Overall, the proposed LCP constitutes a far more comprehensive, detailed, and robust plan than the City's currently certified 1989 LUP (which is used as guidance, with Chapter 3 serving as the standard of review since the Commission handles CDP applications in Pacific Grove in the absence of a fully certified LCP), and will result in better coastal resource protection overall when implemented in the City. Most of the suggested modifications are best understood as refinements to an already protective set of proposed policies and standards that will help aid in better coastal resource management implementation as justified under the Coastal Act.

The most substantive of the suggested modifications pertain to the development standards governing the Asilomar Dunes area, where a residential neighborhood that was originally subdivided and partially developed prior to the enactment of the Coastal Act within coastal dune ESHA poses unique issues that must be addressed, including balancing competing Coastal Act provisions that preclude any residential development within ESHA, on the one hand, with those that require avoidance of unconstitutional takings of private property in implementing the Coastal Act on the other. The Commission well understands this balance having been implementing a CDP program in these dunes for almost 50 years.

When the Commission first heard the proposed LCP this past July,¹ and although Commission and City staff were in agreement on the overwhelming majority of the suggested modifications at that time, there remained a small handful of disagreements related to Asilomar Dunes standards, and these same issues were echoed by a number of public speakers. After taking public testimony and listening to the City's concerns, the Commission voted to defer taking an action on the LCP to a future hearing, thus affording Commission and City staffs some more time to attempt to amicably resolve identified issues and any disagreements, with the goal of addressing the issues raised via reaching agreement, or at the least further narrowing disagreements.

Toward that end, Commission and City staffs engaged in discussions focused on the five specific desired changes that the City had identified, all centered around how to treat the 75 or so existing residences in the Asilomar Dunes area, including how to govern potential future nonconformities with respect to the new LCP policies. These were the same types of issues were also the ones raised by public speakers in July. The City's biggest concern was regarding the date to be used for measuring cumulative alterations for purposes of identifying when the 50% alteration threshold was reached that would require bringing the development into full LCP conformance, where staff had recommended using January 1, 1977² and the City strongly preferred using the date of LCP certification.³ Each of the City's other four identified issues were essentially tied to issues emanating from the measurement date. Because both Commission and City staff agreed that reaching LCP conformance for development in the dunes was an appropriate LCP goal, the disagreement essentially boiled down to one of how soon that would be required (where measuring since 1977 would generally be considered to make it occur more rapidly).

Ultimately, Commission and City staffs came to agreement, whereby the beginning date for measuring cumulative alterations for Asilomar Dunes LCP compliance would be the date of LCP certification, and that that change resolved the other four identified City issues. As such, **City staff indicates they are currently in agreement with all of the suggested modifications as currently proposed by Commission staff.**

¹ See <https://documents.coastal.ca.gov/reports/2019/7/th11a/th11a-7-2019-report.pdf> for the July 2019 staff report.

² Because January 1, 1977 was the effective date of the Coastal Act, and the Commission has been using that date for measuring cumulative alterations in the Asilomar Dunes for determining whether development was to be treated as a replacement structure requiring it to be brought into conformance as part of its CDP program in the Asilomar Dunes since then.

³ Preferring the simplicity of applying the standards moving forward, and arguing that it was a matter of fairness given the new LCP would introduce new rules (albeit, refinements of the rules that have been implemented by the Commission for decades, including relative to the 1989 LUP, but new/different rules nonetheless).

Commission staff believes that such a compromise is appropriate in this case; including given that the nature of Asilomar Dunes residential development under the Commission's long program has been that the alteration threshold is rarely a question, and the Commission has historically seen full demolition/rebuilds and/or brand new houses on vacant lots. That is not to say that that will necessarily be the case under the LCP moving forward, but it provides relative context, and the compromise appropriately addresses legitimate City and resident concerns, and provides a 'fresh start' based on when the policies go into effect, including constructive notice to all parties who may pursue development in the dunes after LCP certification, of what is required there.

Thus, as proposed and as suggested to be modified by staff, the LCP includes a fair and robust regulatory program to guide residential development within this sensitive coastal dune habitat in a manner most consistent with the Coastal Act, and offers a chance to realize meaningful dune restoration and preservation while still allowing for reasonable residential use as was anticipated for this area prior to the enactment of the Coastal Act. Further, the remainder of the LCP with the suggested modifications provides a robust and appropriate set of rules to implement the Coastal Act through the LCP in light of the unique and special attributes of Pacific Grove.

In conclusion, Commission and City staffs have worked extensively and collaboratively to together craft a Coastal Act-consistent LCP that should ably guide development and protect coastal resources in this special seaside community. Again, City staff indicates they are in agreement with Commission staff's suggested modifications, and staff recommends that the Commission approve the LUP update and the IP certification pursuant to those modifications. This will require the Commission to *deny* both the LUP amendment and the IP as submitted, and then *approve* the LUP amendment and the IP if modified as recommended by staff to incorporate the suggested modifications. The motions to accomplish this are found on pages 5 and 6 below.

TABLE OF CONTENTS

I. MOTIONS AND RESOLUTIONS	5
II. SUGGESTED MODIFICATIONS	7
III. FINDINGS AND DECLARATIONS.....	7
A. BACKGROUND AND HISTORY OF THE PACIFIC GROVE LCP	7
B. COASTAL HAZARDS	8
C. WETLANDS AND ENVIRONMENTALLY SENSITIVE HABITAT AREAS	14
D. WATER QUALITY AND MARINE RESOURCES.....	27
E. CULTURAL AND ARCHEOLOGICAL RESOURCES	31
F. LAND USE AND DEVELOPMENT	33
G. VISUAL RESOURCES.....	36
H. PUBLIC ACCESS AND RECREATION	39
I. LOW-COST VISITOR ACCOMMODATIONS	42
J. PUBLIC SERVICES/WATER SUPPLY	45
K. INTERPRETIVE GUIDANCE.....	49
L. CDP REQUIREMENTS, PROCEDURES, AND ANALYSIS OF PROPOSED IP SUBMITTAL	50
M. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	51

EXHIBITS

Exhibit 1: Location Maps

Exhibit 2: Photos of the Pacific Grove Coastal Zone Area

Exhibit 3: Proposed LUP and IP with suggested modifications in strike-through and underline

CORRESPONDENCE⁴

⁴ Showing correspondence received since the July 2019 Commission hearing on this matter. For prior correspondence, see July 2019 Correspondence and July 2019 Ex Part Communications.

I. MOTIONS AND RESOLUTIONS

Staff is recommending that the Commission approve the LCP with suggested modifications. The Commission needs to take four separate actions, two on the LUP and two on the IP, to effectuate this recommendation.

1. Deny the LUP Amendment as Submitted

Staff recommends a **NO** vote on the following motion. Failure of this motion will result in denial of the LUP amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

***Motion 1:** I move that the Commission certify Land Use Plan Amendment LCP-3-PGR-18-0093-1 as submitted by the City of Pacific Grove, and I recommend a no vote.*

***Resolution 1:** The Commission hereby denies certification of Land Use Plan Amendment LCP-3-PGR-18-0093-1 as submitted by the City of Pacific Grove and adopts the findings set forth below on the grounds that the land use plan amendment as proposed does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.*

2. Certify the LUP Amendment with Suggested Modifications

Staff recommends a **YES** vote on the following motion. Passage of the motion will result in certification of the LUP amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

***Motion 2:** I move that the Commission certify Land Use Plan Amendment LCP-3-PGR-18-0093-1 for the City of Pacific Grove if it is modified as suggested in this staff report, and I recommend a yes vote.*

***Resolution 2:** The Commission hereby certifies Land Use Plan Amendment LCP-3-PGR-18-0093-1 for the City of Pacific Grove if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.*

3. Deny the IP as Submitted

Staff recommends a **YES** vote on the following motion. Passage of this motion will result in rejection of the IP and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

***Motion 3:** I move that the Commission reject Implementation Plan LCP-3-PGR-18-0093-1 as submitted by the City of Pacific Grove. I recommend a yes vote.*

***Resolution 3:** The Commission hereby denies certification of the Implementation Plan submitted by the City of Pacific Grove and adopts the findings set forth below on grounds that the Implementation Plan as submitted does not conform with, and is inadequate to carry out, the provisions of the certified land use plan as amended. Certification of the Implementation Plan would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Plan as submitted.*

4. Certify the IP with Suggested Modifications

Staff recommends a **YES** vote on the following motion. Passage of this motion will result in certification of the IP with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

***Motion 4:** I move that the Commission certify Implementation Plan LCP-3-PGR-18-0093-1 for the City of Pacific Grove if it is modified as suggested in this staff report. I recommend a yes vote.*

***Resolution 4:** The Commission hereby certifies the Implementation Plan for the City of Pacific Grove if modified as suggested and adopts the findings set forth below on grounds that the Implementation Plan with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Plan if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.*

II. SUGGESTED MODIFICATIONS

The Commission suggests that the following changes to the submitted City of Pacific Grove Land Use Plan amendment and Implementation Plan are necessary to make the requisite Coastal Act and LUP findings. If the City accepts the suggested modifications within six months of Commission action (i.e., by May 15, 2020), by formal resolution of the City Council, the City's Local Coastal Program will become effective upon Commission concurrence with the Executive Director finding that this has been properly accomplished. Please see **Exhibit 3** for the suggested modifications to the City of Pacific Grove LUP amendment and IP.

III. FINDINGS AND DECLARATIONS

A. BACKGROUND AND HISTORY OF THE PACIFIC GROVE LCP

Certification of the LUP in 1989 was the end result of a lengthy land use planning effort. Initially, the City requested that the Commission prepare the LCP for the City, and that effort concluded in 1980. However, the City declined to adopt the recommended LCP and began its own planning effort in 1983. That effort produced several iterations that eventually culminated with an LUP submittal and Commission approval with modifications in 1988, and Commission certification of the LUP in 1989 (following local government acceptance of the Commission's approval with modifications). Planning efforts to develop an IP and reach full LCP certification began immediately after the 1989 LUP certification, but that effort stalled after several years of various draft versions that never yielded an IP submittal. Another concerted effort to establish an IP began in 2000, which again failed to result in an IP submittal. Thus, the Commission has retained coastal permitting authority over Pacific Grove since adoption of the Coastal Act, with the certified 1989 LUP being used as persuasive guidance. The City did submit, and the Commission certified, an LUP amendment in 1998 that added the "Coastal Parks Plan" as an element of the 1989 LUP, which provides guidelines and goals for development within the City's extensive coastal parklands. The current LCP amendment proposal is the first LUP amendment since the 1998 Coastal Parks Plan and the first ever IP submittal which would, if certified, would create a fully Commission-certified LCP and vest primary coastal permitting authority with the City for the first time.

The present LUP amendment/IP certification submittal was filed as complete on May 9, 2019. The amendment was brought to the Commission's July 2019 hearing for certification, but, after public testimony, was continued to a future hearing date in order for Commission staff and City staff to further discuss certain issues primarily related to development parameters in the Asilomar Dunes Residential Area. On September 11, 2019, the Commission approved a one-year extension of the time limit for Commission action on the LUP amendment and IP Certification submittal. The one-year extension resulted in a new deadline for Commission action of September 17, 2020.

B. COASTAL HAZARDS

Section 30253 of the Coastal Act requires minimization of risks to new development from coastal hazards, including the need for new development to ensure long-term structural integrity, minimize future risk, and to avoid landform-altering protective devices along bluffs and cliffs:

Section 30253. New development shall: (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Coastal Act Section 30235 addresses the use of shoreline armoring:

Section 30235. Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Coastal Act Sections 30253 and 30235 acknowledge that seawalls, revetments, cliff retaining walls, groins, and other such structural or “hard” methods designed to forestall erosion also alter natural landforms and natural shoreline processes. Accordingly, under Section 30235 shoreline protective devices are required to be allowed only to serve a coastal-dependent use, or to protect existing (not new) structures or public beaches in danger of erosion (subject to the requirement that adverse impacts to local shoreline sand supply are mitigated or eliminated, and per other Coastal Act sections that other coastal resource impacts are also addressed). In other words, new, non-coastal-dependent development are not obligated shoreline protective devices in their proposed siting and design, and instead should be located safe from coastal hazards threat without reliance on such devices. The Coastal Act provides these limitations because shoreline protective devices can have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on- and offsite, ultimately resulting in the loss of beaches.

As such, for consistency with the above Coastal Act policies, the LCP must, at a minimum, include the following: policies that require development to be safe from coastal hazards risk, including as these hazards may be exacerbated in the future due to climate change and sea level rise; policies that specify which uses are potentially allowed shoreline protective devices, namely coastal-dependent development and other development that was existing prior to the Coastal Act’s effective date (i.e., January 1, 1977); and, for such development allowed shoreline protection, specify the requirements and mitigation measures needed to ensure resultant coastal resource impacts, including with respect to the impact on sand supply and public access and recreation from loss/manipulation of beaches and bluffs, are mitigated.

Background

The Pacific Grove coastal zone is unique in that much of the immediate shoreline is in public

ownership (owned by either the City or State Parks) and the vast majority of development between the sea and the first public road is related to public access (e.g., a recreational trail), public recreation, public infrastructure (e.g., roads, parking areas, public services infrastructure including water pipelines), and coastal-dependent development (i.e., certain elements of Hopkins Marine Station, which is a marine research institution owned and operated by Stanford University)). In fact, in terms of non-coastal-dependent private oceanfront uses, there are only two residential structures, both of which are located within the Asilomar Dunes area seaward of the first public road (Sunset Drive). Pacific Grove's shoreline is also unique in that much of its northern-facing shoreline along Ocean View Boulevard upcoast from Point Pinos is largely made up of relatively erosion-resistant granitic rock with only small stretches of sandy beaches. The granite base is overlain with marine terrace deposits between two and twelve feet thick and occasionally with manmade fill, which are both much more susceptible to erosion forces. The City maintains a continuous blufftop recreational trail, and parklands along the entire immediate shoreline area between the sea and the first public road, which range anywhere between a few feet and several hundred feet wide. And downcoast from Point Pinos is State Parks' Asilomar State Beach with dunes, broad sandy beaches, tidepools, and a continuous trail, some of which is made up of a boardwalk. Due to the relative abundance of public blufftop parks and the relative scarcity of sandy beach (particularly on the north side of the City), the main public access and recreational opportunities are related to activities such as walking and biking along the recreational trail, as well as taking in the sights, sounds, and smells of the ocean, natural habitats, and abundant wildlife.

As part of the LCP Update process, the City completed a Climate Change and Vulnerability Assessment in 2015 that helped identify potential coastal hazards and identify potential resources that may be subject to such hazards (see Appendix A). In addition to potential threats from erosion and wave attack, the report also found that certain areas of the City may also be under threat from floods and tsunamis. Although granitic rock is relatively erosion resistant, localized erosion "hot spots" and large sudden fractures have periodically been identified. As a result, portions of the City's Recreational Trail and parkland along Ocean View Boulevard are already protected to varying degrees with both pre- and post-Coastal Act shoreline armoring structures, including shoreline protection devices permitted by the Coastal Commission in recent years (e.g., CDP 3-17-0335, which authorized a small bluff retention device to shore up an erosion "hotspot" and protect the trail and parkland). The City has already taken steps to develop long-range plans to deal with erosion issues, including a plan that would relocate inland several segments of the recreational trail around the Point Pinos Lighthouse Reservation as a short-term adaptation strategy, which was approved as a CDP waiver by the Commission in April 2018 (CDP 3-18-0037-W). That plan also identified a long-term strategy that would convert Ocean View Boulevard in this location into a two-way bike and pedestrian pathway, redirecting automobile traffic around the Point Pinos area via Asilomar Avenue and Lighthouse Avenue. The City has also begun a similar larger-scale effort to develop appropriate adaptation strategies into a Shoreline Management Plan for the rest of the City-owned areas of the immediate shoreline. Thus, the City has taken coastal hazards and shoreline armoring issues seriously, including because its shoreline is its most critical publicly-owned asset, and has developed forward-thinking ideas for how to manage it both now and into the future. These ideas have been encapsulated into the proposed LCP, as described below.

Land Use Plan Update Analysis

The proposed LUP includes policies that can be grouped into three categories: 1) policies that require additional long-term planning and continuous study of coastal hazards issues affecting the City, the results of which may warrant future amendment of the LCP (i.e., meant to ensure the LCP is a “living and breathing” document to be updated as new information is known); 2) policies that require new development to be safe from coastal hazards risk; and 3) policies that specify which types of uses are and are not allowed shoreline armoring, and the coastal resource protection requirements for such allowable armoring to mitigate impacts.

First, with respect to additional long-term planning, the proposed LUP generally recognizes the potential threats from coastal hazards, including the impacts from climate change and sea level rise. The LUP also generally acknowledges that information regarding potential hazards will continue to evolve as time progresses and that planning efforts to deal with these issues will need to continue long after this LCP is certified. Thus the proposed LCP includes a series of policies that commit the City to additional research and hazards policy refinement over time, including those that ensure the City will continue to gather information regarding potential hazards, will periodically update the LCP to better address such hazards, will continuously monitor sea level rise and associated impacts, and will act in coordination with appropriate stakeholders (e.g. City of Monterey, County of Monterey, state and federal natural resources agencies, private landowners, etc.) in order to address regional and interjurisdictional hazards issues (see Policies HAZ-1 to HAZ-16 beginning on page 38 of **Exhibit 3**). The LUP also includes a policy that commits the City to finalize a Shoreline Management Plan that identifies specific prescriptions for the unique sub-geographies and issues for the entire shoreline, including to guide where along the immediate shoreline area it makes the most sense to allow for limited shoreline armoring or to allow for managed retreat so as to address coastal hazards and maximize public access, while limiting potential impacts of such access on erosion by maintaining and directing the public toward formal accessways. While these policies are generally consistent with planning suggestions provided in the Commission’s adopted Sea Level Rise Guidance document, two small minor modifications (see pages 38 and 39 of **Exhibit 3**) are necessary to ensure that the City’s evaluations take into consideration multiple sea-level-rise scenarios and to make explicit that the Shoreline Management Plan must include the general parameters for addressing hazards set forth in Policy HAZ-2. As modified, the LUP policies related to future planning requirements ensure that future development is consistent with Coastal Act requirements regarding coastal hazards.

Next, with respect to siting new development in safe locations and minimizing hazards risk, the proposed LCP requires proposed development in potentially hazardous areas to evaluate potential hazards risks on a site-specific basis so as to ensure that development is sited and designed to minimize coastal hazards risk. The LUP generally mirrors the language of Coastal Act Section 30253 in this regard and is therefore consistent with this policy. As an additional precaution, and carried over from the existing certified LUP, the proposed LUP also prohibits certain types of development (i.e., development that is not the following: coastal dependent or coastal related, open space, low-intensity public recreational access facilities and uses, public infrastructure, or allowable shoreline armoring) below the 20-foot elevation line, which has been identified as particularly hazardous, including through the City’s prepared Vulnerability Assessment. Although generally consistent with the Coastal Act, this policy could, unintentionally, be read to allow all types of new public infrastructure along the shoreline,

including major new critical infrastructure such as lift stations or wastewater treatment facilities in hazardous locations, which would not ensure consistency with respect to coastal hazards for such critical public infrastructure. The City indicates this is not the intent; rather, it is to allow for certain minor infrastructure, including existing City pipelines that may need to be located close to the shoreline, to potentially remain there. To clarify this, a modification prohibiting new large infrastructure development in hazardous areas is necessary in order to minimize risks as required by the Coastal Act – see page 41 of Exhibit 3.

Finally, the LUP also includes policies that address both existing and future shoreline protective devices, including specifying the types of development potentially allowed coastal armoring. The Coastal Act limits mandatory allowance for new shoreline protective devices to those that are necessary to protect existing structures (i.e., structures built before the Coastal Act’s operative date of January 1, 1977 and that have not been redeveloped since), coastal-dependent development, and public beaches from erosion. As mentioned earlier, Pacific Grove’s shoreline composition is unique because it mostly consists of publicly-owned parkland, with a few sites devoted to coastal-dependent marine research, and only two privately-owned residential parcels (see photos in **Exhibit 2**). Because of this, the City’s shoreline consists almost entirely of a public pathway, public parklands, public infrastructure, public recreational facilities, and a public roadway that were all developed and in existence prior to the passage of the Coastal Act. Therefore, per Coastal Act Section 30235, the City defines all of the publicly-owned sections of the shoreline (i.e., all of the City’s paths, roads, and infrastructure) as an “existing structure” that is *potentially* eligible for protection by shoreline armoring devices. Although it is true that discrete segments of the City’s shoreline parks and pathways may have been reconfigured or realigned at one time or another since the operative 1977 Coastal Act date, such modifications along small, discrete segments of the City’s shoreline do not alter the fundamental reality that the City’s continuous shoreline infrastructure as a whole has been extant and operating for public use and enjoyment since before the Coastal Act and is an existing structure that is not only eligible but in some cases warrants protection because it provides the main public access and recreational opportunities within the City, as explained above. In addition to specifying the City’s shoreline infrastructure as potentially eligible for shoreline armoring, the proposed policies also address the coastal-dependent structures and uses at Hopkins Marine Station, particularly those that are needed for marine research. While certain facilities within Hopkins Marine Station are coastal dependent because they must be located adjacent to the sea in order to function (e.g., boat launches and marine research equipment), other development does not necessarily qualify as coastal dependent because it could be located anywhere and does not depend on a coastal location to provide functionality (e.g. parking lots and general office buildings). The LUP thus allows armoring for coastal-dependent development at Hopkins Marine Station in conformance with Section 30235. The only other type of development along Pacific Grove’s shoreline is the two private residences along Sunset Drive. Both of these residences were either constructed (see CDP 3-96-102 (Page)) or completely redeveloped (see CDP 3-01-091 (Wilde)) after the passage of the Coastal Act and are therefore are not entitled to armoring, and the LUP states as much.

Based on all of this, rather than just mirroring Section 30235’s language about “existing structures” and “coastal dependent development” potentially entitled to armoring, since these two types of development are already *specifically* identified within the scope of the City’s coastal zone, the City more directly defined which uses meet these criteria and thus specified in the policies which uses are allowed armoring and which are not. In other words, the LUP recognizes

the uniqueness of Pacific Grove's shoreline and allows armoring for certain categories of development already determined to be existing (i.e., public recreational facilities (e.g., public parks trails, and paths) and public infrastructure (e.g., public roads, sidewalks, and public utilities)) and for certain development at Hopkins Marine Station that is coastal dependent; while prohibiting armoring for categories of development already determined not be entitled to armoring (i.e., private residential development). The City's proposed LUP is therefore consistent with the requirements of Coastal Act sections 30235 and 30253 in this regard.

In addition to LUP policies regarding what type of development is eligible for shoreline armoring, the LUP also includes a series of policies to determine when armoring will be allowed, how armoring should be designed, and how to appropriately mitigate armoring's impacts. The LUP states that armoring shall only be allowed when a site-specific analysis determines there is development in critical danger from erosion and armoring is the least environmentally damaging alternative. Thus, even for the types of development that are potentially allowed armoring, such allowance is not an entitlement, but rather must still be found to be the most feasible alternative through a robust alternatives analysis, including evaluation of managed retreat further inland to avoid armoring and its impacts. The LUP also requires armoring devices to protect and enhance public views; minimize alteration of, and be visually subordinate to, the natural character of the shoreline; avoid impacts to archeological resources; and protect other coastal resources as much as possible. The policies also require mitigation for the impact of proposed armoring devices, including impacts from the device's physical encroachment on a beach, fixing of the back beach, and prevention of new beach formation in areas where the bluff/shoreline would have otherwise naturally eroded, and the loss of sand-generating bluff/shoreline materials that would have entered the sand supply system absent the device. Minor modifications to this policy (see page 43 of **Exhibit 3**) are necessary to state that mitigation shall initially be determined on a 20-year basis, due to the difficulty in determining long-term impacts from shoreline armoring beyond the initial 20-year threshold. Retention of shoreline armoring devices beyond the initial 20 years of authorization require additional consideration and evaluation of impacts beyond the initial 20 years, including potentially the need for any additional mitigation for new or unmitigated impacts going forward.

Finally, proposed LUP policies also address existing legally-established shoreline armoring devices, including requirements to replace or augment existing devices in order to minimize ongoing impacts, or to remove such devices entirely if determined not to be necessary to protect development. Although these policies form a robust program for controlling and mitigating for shoreline armoring for the protection of coastal resources, one small modification⁵ (see page 41 of **Exhibit 3**) is required in order to specify that "critical danger from erosion" means that development will be unsafe for use within two years, which is generally consonant with past Commission actions.

In conclusion, the proposed LUP includes a robust policy framework that responds to the unique geography and issues facing Pacific Grove's shoreline, one that is almost entirely composed of public parkland and public infrastructure that pre-dates the Coastal Act, along with certain

⁵ Commission staff has also suggested modifications to the order and arrangement of the proposed hazards policies for greater clarity and ease of use, as noted in the comment on page 40 of Exhibit 3. These are simply for clarity and readability, and do not substantively change the policies.

coastal-dependent uses at Hopkins Marine Station. Since these are the types of uses Coastal Act Section 30235 specifies may be eligible for armoring, instead of just repeating 30235's language, the LCP proactively defines which uses are "existing," namely public access and recreational uses and other public infrastructure, and which types of development are coastal dependent. In addition, since only two shoreline parcels are privately owned, and both with residences built or rebuilt since 1977, the LUP specifically states that such uses are not eligible for armoring. The LUP is thus directive and proactive regarding which uses are potentially allowed armoring and which are not, consistent with the Coastal Act. And the term "potentially" is an important qualification to the allowance for shoreline armoring, since the LUP still requires any proposed armoring to go through a robust alternatives analysis to evaluate non-armoring options, including the relocation inland alternative. These types of issues will also be more holistically and comprehensively evaluated through the required Shoreline Management Plan, which will give the City and the public an opportunity to more effectively plan the City's waterfront future, including where it makes the most sense to armor and where to retreat so as to maximize public access and recreation in this critically important location. In sum, as modified, the proposed policies are robust, mirror the Commission's own best practices, and are consistent with the Coastal Act.

Implementation Plan Analysis

The submitted IP includes requirements necessary to carry out these LUP policies (as proposed to be amended), including the specific information that proposed development must submit during the CDP application review process to determine and ensure that a proposed project minimizes risks from coastal hazards as required of the LUP. Specifically, applications for development that is potentially subject to coastal hazards must complete an "Initial Hazards Assessment" to determine whether the proposed project may be subject to coastal hazards over its lifetime. If the Initial Hazards Assessment determines that the development may be subject to such hazards, a complete "Coastal Hazards Report" that identifies, analyzes, and mitigates for the identified hazards is required. The proposed IP also includes a number of application requirements when shoreline armoring is proposed, including an analysis of the permitting history to ensure the armoring is legally established, identification of the hazards and coastal processes applicable to the site, a full alternatives analysis to determine if there are less environmentally damaging alternatives, an impact analysis that identifies all potential environmental and public access impacts, a mitigation plan that identifies potential public access improvements that can be made to offset the identified impacts, and a maintenance and monitoring plan to ensure that the shoreline armoring device is maintained in its approved state for as long as the existence of the armoring is necessary. Finally, with respect to Hopkins Marine Station, the IP includes language encouraging the development of a long-range planning document that is designed to address coastal hazards at this particular site.

In short, the LCP is set up in such a manner that the detailed regulatory policies for specific issue areas are specified in the LUP, and the IP carries out those policies by cross-referencing back to them and specifying the application requirements and other triggers needed for their implementation. In other words, generally speaking, the IP does not include new policies, but rather reiterates the ones already articulated in the LUP. For example, with respect to coastal hazards, the LUP includes policies that require new development to be safe from coastal hazards risk, specifies the types of development potentially allowed shoreline protective devices, and lists the requirements, including in terms of requisite mitigation, for such devices. The IP carries

these requirements out by, among other things, requiring a coastal hazards analysis through the CDP application review process to ensure conformance with the LUP's directive policies. As such, the IP is consistent with and adequate to carry out the LUP.

C. WETLANDS AND ENVIRONMENTALLY SENSITIVE HABITAT AREAS

The following sections of the Coastal Act pertain to preservation and enhancement of coastal waters, wetlands, and environmentally sensitive habitat areas (ESHAs):

Section 30107.5. "Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of wastewater discharges and entertainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging wastewater reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240. (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Additionally, Section 30233, in relevant part, provides wetland protection as follows:

Section 30233.

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following: ...

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreation.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*

(6) *Restoration purposes.*

(7) *Nature study, aquaculture, or similar resource dependent activities.*

(b) *Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.*

(c) *In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. ...*

Background

The above Coastal Act policies emphasize the importance of protecting, maintaining, enhancing, and restoring coastal waters, wetlands, and ESHA, and stress that development within or adjacent to such areas is only allowed for a very limited number of uses and under exacting criteria as specified in each applicable provision to protect these resources from degradation. Factors that have the potential to affect the viability and stability of natural systems relevant to each applicable provision include alteration in drainage systems, sedimentation and erosion, obstacles to proper water circulation, grading/dredging, filling of coastal waters, construction impacts, and incompatible uses. The proposed LUP policies can only be found consistent with the above-cited Coastal Act policies provided these concerns are all properly countenanced.

The proposed LUP's ESHA policies can generally be broken into two sections. The first section includes general biological resource policies that are broadly applicable throughout the City, both to known and designated ESHA (e.g., Crespi Pond and Majella Slough, coastal sand dunes, etc.) and to ESHA that has yet to be identified. The second section includes policies that exclusively pertain to development within the Asilomar Dunes Residential Area, where a residential neighborhood subdivided prior to the Coastal Act entirely within dune ESHA poses unique development issues that must be addressed via neighborhood-specific policies.

Pacific Grove Biological Resources

In addition to the sand dunes and associated species described in more detail below, the City and its offshore areas contain a wide variety of significant flora and fauna that add to the unique and special qualities of the City. Characteristic flora includes Monterey pine, Monterey cypress, and Coast live oak woodlands and their associated understory plants. Characteristic fauna include monarch butterfly, black legless lizard, black-tailed deer, harbor seals, southern sea otter, humpback whale, gray whale, brown pelican, Brandt's cormorant, double-crested and pelagic cormorants, and the black oystercatcher. A particular concern with the protection of these species, particularly along the City's blufftop parklands and at Hopkins Marine Station, is balancing the protection of biological resources while still maximizing public access. The Commission has approved certain limitations on access in the past in order to protect certain sensitive resources as a countervailing policy consideration, such as the construction of

temporary fencing to protect harbor seals during pupping season. Some limitations on access, specifically the extensive fencing at Hopkins Marine Station, pre-date the Coastal Act and have thus never received formal Commission approval (see also “Public Access and Recreation” Section below).

The City also contains habitats, in addition to sand dunes, that were categorically defined in the 1989 LUP as ESHA, and the current proposed LUP policies bring those designations forward. Specifically, Crespi Pond and Majella Slough are two ecologically significant wetland habitats that provide important nesting and foraging habitat for both resident and migratory species, and the LUP calls them out as types of ESHA. Riparian habitat within the City is limited, although some areas around Majella Slough and areas around Greenwood Park would likely qualify as stream/riparian habitat based on a fact-specific determination, which also is a type of ESHA per this LUP. See **Exhibit 2** for the locations of these areas.

Asilomar Dunes Complex

Coastal sand dunes constitute one of the most geographically constrained habitats in California. They only form in certain conditions of sand supply in tandem with wind energy and direction. Dunes are a dynamic habitat subject to extremes of physical disturbance, drying, and salt spray, and support a unique suite of plant and animal species adapted to such harsh conditions. Many characteristic dune species are becoming increasingly uncommon. Even where degraded, the Coastal Commission has found this important and vulnerable habitat to be ESHA due to the rarity of the physical habitat and its important ecosystem functions, including that of supporting sensitive species.

The Asilomar Dunes complex is an environmentally sensitive habitat area extending several miles along the northwestern edge of the Monterey Peninsula. Specifically, the Asilomar Dunes complex extends from Point Pinos at the Lighthouse Reservation in Pacific Grove through Spanish Bay and to Fan Shell Beach in the downcoast Del Monte Forest area of unincorporated Monterey County (see **Exhibits 1 and 2**). Within Pacific Grove, this dunes complex extends through two protected areas, the Lighthouse Reservation area and Asilomar State Beach, which sandwich a dune-residential community. Although this dune-residential area is often described as Asilomar Dunes more broadly, it is only a part of the larger Asilomar Dunes complex.⁶

The Asilomar Dunes extend inland from the shoreline dunes and bluffs through a series of dune ridges and inter-dune swales to the edge of more urban development in some cases and the edge of the native Monterey pine forest in others. The unusually pure, white quartz sand in this area was formerly stabilized by a unique indigenous dune flora. However, only a few acres of the original habitat area, which spans almost five miles of shoreline and includes the Asilomar residential neighborhood in Pacific Grove, remain in a natural state. The balance of the original habitat has been lost or severely damaged by sand mining, residential development, golf course development, trampling by pedestrians, and the encroachment of non-indigenous introduced vegetation. While a number of preservation and restoration efforts have been undertaken (most notably at the Spanish Bay Resort, Asilomar State Beach, and in connection with previously approved residential developments on private lots), much of the Asilomar Dunes complex

⁶ The Pacific Grove Asilomar Dunes Residential Area is located between Lighthouse Avenue and State Parks' Asilomar Conference Grounds, and between inland Asilomar Avenue and the Asilomar State Beach shoreline.

remains in a degraded state. Even so, it remains a valuable habitat area because it supports certain rare and/or endangered plants and animals that are characteristic of this environmentally sensitive and rare habitat.

The Asilomar Dunes complex includes up to ten plant species and one animal species of special concern that have evolved and adapted to the desiccating, salt-laden winds and nutrient poor soils of the Asilomar Dunes area. The best known of these native dune plants are the Menzie's wallflower, Monterey spineflower and the Tidestrom's lupine, which all have been reduced to very low population levels through habitat loss and are Federally-listed endangered species. Additionally, the native dune vegetation in the Asilomar Dunes includes other dune species that play a special role in the ecosystem; for example, the bush lupine, which provides shelter for the rare black legless lizard, and the coast buckwheat, which hosts the endangered Smith's blue butterfly. Native Monterey pine trees that comprise the forest-front (i.e., an area where the central dune scrub plant community intersects with and transitions to the native Monterey pine forest community) serve to minimize environmental stresses to the interior trees of the forest, reduce tree failures that result when trees are more directly exposed to wind, and are considered critical in maintaining the stability of the landward extent of the sand dunes. Because of these unique biological and geological characteristics of the Asilomar Dunes, the Commission has a long history of identifying all properties in the Asilomar Dunes area with these dune system features, both in the City of Pacific Grove and Monterey County, as being located within ESHA, including through the 1989 Pacific Grove LUP. Based on this understanding, the Pacific Grove 1989 LUP certified by the Commission included a variety of policies that were designed to protect this identified dune ESHA.

Asilomar Dunes Residential Area

The residential zoning of the existing parcels in the Asilomar Dunes Residential Area (see **Exhibit 1**) pre-dates the Coastal Act, including Section 30240, the purpose of which is to protect environmentally sensitive habitat areas by only allowing uses dependent on the resource (i.e., "resource-dependent uses") within them, and only when such resource-dependent uses are sited and designed in a manner that will not significantly disrupt habitat values. Ordinarily the Coastal Act flatly prohibits residential uses in ESHA (because residential development is not a resource-dependent use), absent a need to comply with Section 30010 in order to avoid an unconstitutional taking of private property. Although landowners have no vested right in existing or anticipated zoning,⁷ in implementing the Coastal Act the Commission is sensitive to land use decisions and circumstances that predate enactment of the Act, as well as other relevant legal considerations, such as constitutional property rights. Construction of a single-family dwelling within ESHA would normally be completely incompatible with the requirements of Coastal Act Section 30240, which expressly states that "only uses dependent on [ESHA] resources shall be allowed within those areas." Still, considering that the Asilomar neighborhood was subdivided and designated for residential use via the City's land use and zoning designations prior to passage of the Coastal Act, and further considering that the Commission must allow *some* economically-beneficial use of such properties to avoid an unconstitutional taking of private property without compensation, the Commission originally certified the LUP in 1989 to allow for limited single-family, low-density residential dwellings pursuant to exacting criteria.

⁷ See *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 796.

With respect to such “takings approvals,” the Commission has over the years approved many single-family dwellings on existing legally subdivided properties subject to a comprehensive regulatory program dictating precise development and dune restoration standards set forth in the 1989 certified LUP (e.g., allowing up to 15 or 20% dune coverage for residential development depending on parcel size, requiring restoration and the permanent protection of the remaining 80 or 85% of dune resources, requiring additional restoration at a 2:1 ratio for direct dune coverage, prohibiting fencing and other accessory structures, allowing for up to 5% of dune area for outside use, and limiting building heights to 18 or 25 feet depending on distance to Sunset Drive, etc.). These requirements, particularly related to coverage limits and restoration/protection requirements for the remaining dune areas, has been an important component of the Commission’s Asilomar Dunes program, including because they protect dune resources as much as possible while still providing a means to allow residential use, thereby essentially balancing Section 30240’s ESHA requirements with 30010’s regulatory taking requirements. The Commission’s program has also helped to bring greater certainty to the public and property owners in the Asilomar area. At the same time, the entire program is premised on avoiding takings, and is *not* premised on facilitating residential development beyond that in dune ESHA where the Coastal Act would otherwise direct that such development is prohibited. This context, namely, that this is not an inland residential subdivision but rather sensitive coastal dune ESHA where residential development is not normally allowed pursuant to the Coastal Act but for to address an unconstitutional taking of private property, is an important lens through which to review and understand these policies.

The impacts of residential use on ESHA are varied. First and foremost is the direct loss of dune ESHA that occurs due to the residential development footprint that is potentially allowed on each of the existing parcels. The Asilomar Dunes Residential Area, an area of approximately 60 acres, is divided into about 95 lots and is currently developed with approximately 75 dwellings. As indicated above, the Commission has limited such direct loss of dune ESHA through coverage limitations in its permitting efforts, but it is still a loss of dune ESHA. Despite such coverage by residential development, the Asilomar Dunes Residential Area still contains some of the best remaining examples of the original Asilomar Dunes landform and flora. While past Commission approvals have typically required proposed structures to avoid individual occurrences of endangered plant species,⁸ development necessarily limits the available space and habitat for such plants and also the potential seed banks of such species (rather than simply just expressed above-ground plants) to occupy. The Commission’s program has required these kinds of direct loss impacts to be offset at a 2:1 ratio.

The other significant onsite impacts to ESHA are due to the location of existing residential uses immediately adjacent to the remaining habitat, without any buffers. To implement Coastal Act Section 30240, the Commission has required not only avoidance of ESHA but also the use of buffers to minimize the disruption of habitats from non-compatible uses. This protective management measure is expressly supported by subsection (b) of Coastal Act Section 30240.

⁸ This does not account for potential seed bank present below the surface of the dunes on the site, but rather is focused on individual expressed above-ground plants. Given the shifting nature of these types of dunes, including shifting seed banks etc., it is generally presumed that expressed individuals indicate that seed stock for these species is present in the general area, and that the “habitat” for these species is not necessarily confined to individual expressed occurrences. That said, in past approvals the Commission has only required avoidance of locations of individual sensitive plants that are identified on a site.

Such “indirect” impacts include light and noise; shading of dune habitat; the potential introduction of nonnative plants and invasive plant species; direct disturbance of habitat from residentially-related activities; and potential impacts on flora and fauna from domestic animals. In the case of dune habitat, the presence of residential development also results in a general impact to the ecological functioning of the dune system, including fragmentation of habitat and the prevention of sand movement that is an ongoing feature of dune habitat systems. If residential development is allowed to persist in the Asilomar Dunes Residential Area, such indirect impacts are generally unavoidable because there is no feasible location that would provide a buffer to ESHA or avoid habitat fragmentation. Though unavoidable, it is still critical to make every effort to site and design any allowed development to maximize dune ESHA protection and to limit such impacts as much as possible. This is another fundamental tenet that needs to be respected and understood in relation to proposed LUP policies.

There are also dune impacts that are detrimental to dune resources from even seemingly minor residential remodeling projects within existing residential footprints. Although such development may not lead to additional dune coverage per se, such projects help to perpetuate excessive residential development in ESHA when that is not allowed by the Coastal Act, and these types of projects must be understood in the same context as described above. These types of projects also have impacts that are not inconsequential, and include construction impacts, increased lifespan and associated direct impacts for existing structures, as well as the potential for such structures to accommodate greater intensities of use (e.g., additional residents) and therefore additional residential impacts from increased light, noise, cars, and other residential activities. Particularly where there is an existing home that already provides for reasonable economic use of a property, there is an argument to prohibit any and all new development (other than ordinary repair and maintenance) because approval of such projects are not necessary to avoid an unconstitutional taking of private property, and will inevitably lead to an increase of adverse effects to dune ESHA, contrary to the high standard of protection for ESHA habitat values afforded under Section 30240 of the Coastal Act.

The cumulative impacts of additional residential development throughout the Asilomar Dunes Residential Area, including new development, redevelopment, and remodels to existing development, will have a substantial adverse impact on the unique ecology of the Asilomar Dunes because each loss of and impact to natural habitat areas within the Asilomar Dunes formation contributes to the overall degradation of this finite and extremely scarce coastal resource. This cumulative impact includes direct loss of habitat, increased fragmentation and interference with ecological processes, and intensified impacts from expanded and intensified residential development immediately within the dunes system.

Some of the impacts could perhaps be reduced, for example by making the home design more compact (smaller) in order to minimize coverage and maximize adjacent contiguous habitat. However, the overall impacts of the existing residential use on the dune system cannot be *fully* eliminated without entirely eliminating and prohibiting such residential uses, and requiring their removal over time. The Commission has not chosen that path in the past in order to avoid the potential of an unconstitutional taking of private property, and instead has applied a program that allows for residential use in the Asilomar Dunes Residential Area provided it is limited and low intensity, and provided it includes offsetting dune habitat improvements and protections to ensure consistency to the maximum extent possible of the Coastal Act’s ESHA policies.

LCP Land Use Plan Analysis

As described above, the proposed LUP can only be approved if it is found consistent with the Coastal Act. The following analysis determines that the LUP can be found consistent with the Coastal Act if it is modified as suggested by the Commission.

General ESHA Policies

As explained above, the proposed LUP includes a section that is generally applicable to biological resources located throughout the City's coastal zone, as well as a section that is specific to the Asilomar Dunes Residential Area. With respect to the "general" section, the LUP includes an appropriate definition of what constitutes ESHA, describes the specific known habitats that constitute ESHA within the City, and includes general policies that mirror the language of the Coastal Act ESHA protection policies. See pages 66-71 of **Exhibit 3** for the proposed general ESHA policies.

Notably, while the LUP designates wetlands and streams as types of ESHA, it also makes clear that the more specific policies that apply to them are unique and specific to these habitat types as required by the Coastal Act (and thus are not generally applicable to other types of ESHA; likewise, to the extent the ESHA policies specific to wetlands and streams conflict with the more general ESHA policies, the ESHA policies specific to wetlands and streams shall take precedence over the more general ESHA policies in the case of a wetland or stream). Namely, the LUP includes specific protections and allowed uses within wetlands and streams consistent with Coastal Act Sections 30233 and 30236, respectively. For other types of ESHA, the LUP identifies appropriate minimum development buffers, requires project-specific habitat assessments, and limits all uses within ESHA to those that are dependent on the resource. The LUP also includes specific protections for sensitive animal species known to occur within the City, such as monarch butterflies, black legless lizards, harbor seals during pupping season, and black oystercatchers. The LUP also addresses the protection of existing trees, requires CDP approval for the removal of certain trees, prohibits the planting of invasive plant species, and requires landscaping plans to include vegetation that is appropriate for that particular area. However, the proposed LUP does not include a policy to specifically require a CDP for proposed restrictions to coastal access intended for the protection of biological resources (e.g., harbor seals during pupping season). Thus, a modification is needed to add such a policy to the LUP, which also requires that any limits to access are reduced as much as possible through the use of the use of informational signage or other educational outreach, symbolic barriers such as cable-and-post fencing, allowing limited hours for access that is led by volunteers, or (as a last resort) limiting physical access while maintaining visual access. See page 70 of **Exhibit 3** for this suggested modification.

Finally, the proposed LUP also includes policies related to specific biologically significant locations. For example, the LUP includes a policy that specifically requires the removal of invasive species (primarily ice plant) at Hopkins Marine Station, and also requires the restoration of native plant communities at the site and the removal of unnecessary fencing (see page 70 of **Exhibit 3**). A modification to include a policy that requires similar outcomes at the NOAA site is also warranted (see page 70 of **Exhibit 3**). As proposed, the LUP includes policies specific to the Asilomar State Beach and the nearby Conference Grounds to allow for redevelopment of these

visitor-serving facilities, with a slight suggested modification to ensure that the most sensitive habitat areas are protected (see page 77 of **Exhibit 3**).

If modified as described above, the Pacific Grove LUP would include a comprehensive and appropriate set of policies to meet the goals of protecting, maintaining, enhancing, and restoring coastal waters, wetlands, and ESHA (outside of the Asilomar Dunes Residential Area) consistent with the above-cited policies of the Coastal Act.

Asilomar Dunes Residential Area LUP Policies

As described above, the Asilomar Dunes Residential Area (ADRA) includes some 95 residential parcels subdivided prior to enactment of the Coastal Act that are located within sensitive coastal dune habitat that the Commission and the City consider to be entirely ESHA. Continued residential development will have a series of direct, indirect, and cumulative impacts to dune ESHA that cannot be completely avoided or eliminated. Thus the Commission also has a long history of protecting the Asilomar Dunes system ESHA through various development requirements that attempt to strike a balance between maximum dune habitat protection and allowance of reasonable residential use on the pre-existing subdivided parcels in the Asilomar area to avoid an unconstitutional taking of private property.

ADRA LUP Policies Generally

While much of the proposed LUP policies and suggested modifications simply carry forth the same dune protection and development parameters that the Commission has implemented within the Asilomar Dunes Residential Area since the passage of the Coastal Act and certification of the 1989 LUP, a series of clarifications and adjustments to the prior dune protection and development parameters are needed in order to better address certain deficiencies, ambiguities, and loopholes in the existing policies in relation to maximum protection of sand dune ESHA as required under the Coastal Act, which the Commission has been able to identify through many years of experience in processing applications for development within the Asilomar Dunes Residential Area. Suggested modifications are therefore necessary to ensure that the overall approach with respect to allowable development standards within Asilomar Dunes (recognizing the unique situation where an entire residential area is within ESHA) better achieve consistency with Coastal Act ESHA protections to the maximum extent possible relative to the current development standards set forth in the 1989 LUP. In other words, while recognizing that the City must allow *some* residential development within the Asilomar Dunes neighborhood in order to avoid an unconstitutional taking of private property, the development standards within the 1989 LUP can and should be updated to better ensure protection of ESHA, as required by Section 30240 of the Coastal Act, in light of current understandings and based on the Commission's experience in the Asilomar Dunes Residential Area, including to help clarify applicable standards, and also ultimately to better protect ESHA. This is so because the proposed modifications herein also reflect a better understanding – thirty years after the initial development standards within Asilomar Dunes were certified in 1989 – of the sensitivity of dune resources specific to this area based on the most current science and environmental analysis, and the need to interpret the resource-dependent requirements of Section 30240 consistent with subsequent jurisprudence that informs how development in ESHA, including as implemented

through LCP policies, is required to be understood.⁹ Finally, the proposed LUP and suggested modifications are also designed to make the policies as clear and straightforward as possible to address ease of application by both members of the public and the City as it implements these standards, which will also help prevent potential unforeseen loopholes that would lead to additional adverse ESHA impacts. See pages 71-76 of **Exhibit 3** for the proposed policies that address development within the Asilomar Dunes Residential Area and for the suggested modifications to them.

Again, as proposed, the LUP includes appropriate policies that are designed to limit overall development potential throughout the Asilomar Dunes Residential Area generally and to protect dune resources in a taking context. These policies include a prohibition on subdivisions, sidewalks, and detached second units. Additionally, the proposed LUP recognizes that the Asilomar Dunes Residential Area is a “sensitive coastal resource area,” which means that, upon certification of the LCP, all City-approved CDPs for development in this area will be appealable to the Commission. However, certain modifications are necessary to some unresolved issues, as described below.

Asilomar Dunes Residential Area LUP Policies Regarding Coverage

The proposed LUP generally continues the 1989 LUP requirement that all residential development within the Asilomar Dunes Residential Area must be limited to a maximum of 15 percent of the total lot area, which is designated the “Primary Coverage Area.” While the existing 1989 LUP includes exceptions to that general principle by allowing for up to 20% coverage for parcels less than half an acre in size, the proposed LUP eliminates this 20% coverage exception so as to ensure clarity and ease of implementation and to ensure that dune resource protection is maximized and that all parcels are treated equally and are subject to the same 15 percent coverage requirement. Additionally, to ensure consistency with the 15 percent coverage limitation, the proposed LUP states that any area of the lot that is not directly covered by development but instead is committed to non-dune use through siting and design (e.g. cantilevering development directly over dunes, the use of stepping stones and other pathways) will also count towards coverage. The proposed policy excludes eaves from counting as coverage, but a modification is necessary to limit this exception and specify that only roof eaves three feet or less are exempt (see page 72 of **Exhibit 3** for this modification).

Asilomar Dunes Residential Area LUP Policies Regarding Driveway Coverage

The City proposes to exempt certain driveways from the Primary Coverage Area calculation (i.e., they would not count toward the maximum 15% allowed coverage), namely all driveway areas within the required front yard setback (i.e., 75 feet for lots fronting Sunset Drive and 20 feet for all other areas) and further driveway exemptions for additional setbacks if determined to be necessary to protect coastal resources (see page 74 of **Exhibit 3** for the proposed exemptions). In short, under the City’s proposal, residential development would be allowed 15% dune ESHA coverage *plus* an additional 200 square feet to 750 square feet of dune ESHA coverage for driveway coverage (assuming a 10-foot wide driveway), and possibly more if the City required a

⁹ See, for example, *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493 (“*Bolsa Chica*”) and *McAllister v. Coastal Commission* (2009) 169 Cal.App.4th 912 (“*McAllister*”). *Bolsa Chica* was decided approximately 10 years after the development standards within Asilomar Dunes were established within the 1989 LUP, and *McAllister* 20 years later.

larger setback (and thus a longer driveway). For a half-acre lot, where the 15% maximum dune ESHA coverage is 3,267 square feet, the proposed driveway exemption *increases* dune coverage by 6% to 23%. A suggested modification would delete this exemption and instead include all driveways in the 15% coverage limit, including for both clarity and ease of implementation purposes (i.e., fewer exceptions ensures more consistent administration) and to incentivize smaller and more efficient driveways/carports to reduce dune conversion impacts.

Asilomar Dunes Residential Area LUP Policies Regarding Outdoor Use Areas

The existing certified LUP also includes allowances for outdoor development, which have been difficult to interpret and equally difficult to enforce, including because of restrictions on fencing so as to protect dune visual and habitat resources. For clarity, to ensure all properties are treated equally, to clearly delineate between dune habitat and areas where outdoor residential uses are allowed, and to address homeowners' concerns for a modest amount of fenced-in outdoor space for the safety of children and pets, the proposed LUP allows for a maximum of 750 square feet of "Outdoor Use Area." This area will provide for uncovered dune space where residential activities can take place and where fencing may be used to delineate the Outdoor Use Area, provided that any proposed fencing is visually unobtrusive and allows for free passage of sand, seeds, and wildlife. (Proposed policies and suggested modifications related to fencing generally, as well as structural height, are discussed in greater detail in the "Visual Resources" section below). As proposed, the Outdoor Use Area can be increased above 750 square feet if the Primary Coverage Area is reduced an equivalent amount. The Commission concurs that this outdoor use area construct balances allowance for a reasonable economically beneficial residential use while still ensuring protection of sand dune ESHA (since the limited outdoor use area will result in less significant, intensive, and permanent impacts than structural residential development coverage), included based on lessons learned from past development cases in the Asilomar Dunes Residential Area.

Asilomar Dunes Residential Area LUP Policies Regarding Conformance Criteria

Although as part of Asilomar Dunes residential development approvals the Commission has in the past required all areas outside of the approved residential development envelope to be restored, enhanced, maintained, and permanently protected as natural dune habitat in perpetuity (in order to offset the dune impacts of the approved development), and the existing certified LUP also requires this, the proposed LUP does not specifically require such mitigation. Thus a modification is needed to ensure that dune impacts are offset and that all areas on a parcel located outside of the approved Residential Development Envelope (consisting of the Primary Coverage Area and Outdoor Use Area) are restored to dune habitat and permanently protected through a deed restriction or similar legal restriction. This would equate to 85% (minus 750 square feet for the Outdoor Use Area) of the property being restored and retained as dune habitat. See page 72 of **Exhibit 3** for this modification.

Specifically, and consistent with past Commission CDP actions over the past 40 plus years to apply the development parameters described above, the suggested modifications to LUP Policy BIO-24 require that new residential development on vacant lots must include restoration of all areas of the lot outside the Residential Development Envelope and require that the restored areas be permanently protected through a deed restriction or other similar restriction. These suggested modification provisions simply carry forward the Commission's past consistent approach on this

point to residential development within Asilomar Dunes ESHA in that regard into the new LCP (i.e., there are dozens of past Commission CDP cases where this was the outcome).

The nexus for requiring restoration and permanent protection of remaining areas of the parcel in such cases (i.e., per the ADRA development standards (as reflected in the 1989 LUP standards as well as currently in LUP Policy BIO-24)) is based on this dune ESHA context and dune ESHA impacts, and the proposed provisions and modifications are designed to be consistent with takings law and to obviate the need for case-by-case determinations. Moreover, the approach set forth in LUP Policy BIO-24 as proposed to be modified is entirely consistent with, and *not* a departure from, the approach set forth in the 1989 LUP standards which the City, the Commission, and homeowners within the ADRA have understood as applying to residential development within Asilomar Dunes over the last 40 plus years.

Additionally, while the policy above applies to new development on vacant lots, there may be proposed development affecting existing structures in the ADRA where the proposed development is so extensive that it renders the house essentially new (i.e., redeveloped). On this point, there will be projects where alterations to an existing structure are so extensive that they go beyond mere repair and maintenance, such that the structure should be considered a “new structure” that must conform to all current applicable LUP policies. This determination stems from Coastal Act Section 30610(d) (which relates to repair and maintenance) and implementing regulation Section 13252(b), which states that replacement of 50% or more of a structure does not constitute repair and maintenance, but rather constitutes a replacement structure that must be addressed through the CDP process for consistency with the Coastal Act. Modifications to the proposed LUP are necessary to clarify when a modified structure is considered such that the ‘new structure’ is required to conform with all LCP policies, and to provide explicit guidance on how to calculate the 50% replacement threshold for purposes of determining when such structures must be considered new/redeveloped and brought into full conformance with all current LCP policies. See pages 75 and 76 of **Exhibit 3** for these modifications.

Specifically, the suggested modifications explain that: only alterations to major structural components (e.g. roof, foundation, and structural walls, both interior and exterior) count toward the 50% threshold; alterations are not additive between structural components; and alterations are cumulative over time from the date of LCP certification.

With respect to the structural components that should count toward the conformance threshold, the Commission finds that any major structural component should be counted, including internal structural components. Alteration of any major structural component, whether interior or exterior, is identical in terms of its effect on prolonging the life of a nonconforming structure. Not including interior structural walls or foundations in the calculation of the LCP conformance threshold will allow for nonconforming development to continue beyond the “normal” life of said nonconforming development, which will simply prolong the unmitigated adverse impacts to dune ESHA. Removing interior walls and foundations from counting towards the conformance threshold will only prolong the life of nonconforming structures and will ensure the persistence of inappropriate and excessive residential uses in dune ESHA that exceed the percentages allowed by the current Residential Development Envelope standards.

The Commission thus makes suggested modifications to ensure that all structural changes count

towards determining when a project must conform to current LCP standards, including because the whole concept of allowing residential development in the dune ESHA is premised on allowing it provided it meets these standards and thus appropriately mitigates for the fact that it is in dune ESHA and otherwise not allowed but for unconstitutional takings concerns.

With respect to the date for calculating cumulative alterations towards required conformance in Asilomar Dunes residential cases, as noted above, the suggested modification uses the date of LCP certification (when these specific standards go into effect) for when to start calculating cumulative alterations. While arguments can be made that the date should be January 1, 1977, the date the Coastal Act went into effect,¹⁰ it is also true that the standards as specified in this LCP have changed over time (including in relation to the aforementioned 1989 LUP standards related to lot coverage, structure heights, and others). Thus, as a matter of fairness, including not to retroactively count alterations against the 50% conformance threshold that were approved by the Commission as consistent with the standards in effect at that time but not to today's LCP standards, and to ensure that all residents understand and are governed by the same set of standards moving forward, the Commission finds that using date of LCP certification is appropriate in this case.¹¹ See pages 75 and 76 of **Exhibit 3** for this modification.

Finally, the proposed LUP does not address applications for development on nonconforming properties in the Asilomar Dunes Residential Area where the proposed development does not reach the threshold for LCP conformance. These projects have dune impacts, including construction impacts, increased lifespan and associated direct impacts for existing structures, as

¹⁰ Including because: 1) this is the date that Commission staff has used and currently uses when evaluating this very question for proposed projects in the Asilomar Dunes Residential Area; and 2) passage of the Coastal Act itself, and in particular Section 30610(d), provided notice to homeowners in the coastal zone that additional land use rules and regulations would be applicable to their properties; and 3) it would expedite the conformance of these residential properties to current LCP policies and thus the associated dune protection and restoration requirements as compelled by the Coastal Act.

¹¹ Use of the LCP certification date, as opposed to the effective date of the Coastal Act, here for the purpose of calculating cumulative alterations can be distinguished from other situations, particularly with respect to shoreline armoring and coastal hazards. First, CCR Section 13252(b) generally distinguishes repair and maintenance activities versus a replacement structure, which broadly applies to any structures irrespective of when the structure was built. In other words, Coastal Act Section 30610(d) and CCR Section 13252(b) provide direction for when to consider proposed development to be repair and maintenance versus a new replacement structure that must be evaluated for full conformance, even components of which that may have been present before the proposal. This concept is equally applicable in the armoring circumstance as it is in the ESHA circumstance as a matter of identifying a threshold. However, and second, because Coastal Act Section 30235 specifically utilizes the term "existing structures," and the effective date of this section was January 1, 1977 (the effective date of the Coastal Act), the Commission understands the intent of this section to make a clear distinction between pre-Coastal Act structures and structures erected after the passage of the Coastal Act in terms of applicability of Section 30235. Third, as explained above, utilizing the LCP certification date here is appropriate because the Asilomar development standards have changed over time (so using the date of LCP certification is a matter of fairness to affected homeowners going forward), while Coastal Act Section 30235 has been effective and remains unchanged since January 1, 1977, thus putting potentially affected homeowners on notice as to the scope and applicability of the provision since the effective date of the Coastal Act. In other words, a strong textual statutory basis (i.e., "existing structures" as used in Section 30235) exists for applying the January 1, 1977 date with respect to applicants seeking shoreline protection for development, whereas, as demonstrated through the discussion above, there are other reasons justifying the Commission's use of its discretion to apply the LCP certification date for purposes of determining when a structure has reached the threshold for LCP compliance in the Asilomar Dunes.

well as the potential for such structures to accommodate greater intensities of use (e.g., additional residents) and therefore additional residential impacts from increased light, noise, cars, and other residential activities. Suggested modifications require that such applications shall only be approved if: there is no new dune coverage; the portions of the property outside of the Primary Coverage Area are restored to dune habitat and permanently protected through a deed restriction or similar legal restriction, and; an offsetting area of dune located off of the project site is restored, which when added to the onsite restoration will equal 85 percent of the total project site lot area. (The latter two suggested modifications are the same as for new development proposed within the Asilomar Dunes Residential Area, and are justified for the same reasons that sand dune ESHA outside of the Residential Development Envelope must be permanently protected to the extent that it is not already secured by virtue of the continuance of the existing residential development, regardless of whether the extent of the development exceeds the LCP conformance threshold or not.) The suggested modification therefore allows property owners of nonconforming¹² structures to remodel their homes if all impacts are appropriately mitigated.¹³ See page 76 of **Exhibit 3** for this modification.

If modified as described above, the Pacific Grove LUP would include a comprehensive and appropriate set of policies that are as consistent as possible with the above-cited policies of the Coastal Act in terms of protecting and enhancing dune ESHA resources, while allowing for reasonable economic use of properties within the Asilomar Dunes Residential Area in order to avoid a taking of private property.

LCP Implementation Plan Analysis

As described above, the proposed IP can only be approved if it is consistent with and adequate to carry out the LUP, as modified, as described above. The following analysis determines that the IP can be found consistent with and adequate to carry out the LUP if it is modified as suggested by the Commission. The above LUP analysis is incorporated herein by reference.

General ESHA IP Requirements

The submitted IP includes requirements necessary to carry out the general LUP ESHA policies, including the specific information that proposed development must submit in order to determine

¹² And for existing conforming structures, the suggested modification allows their alteration so long as 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.

¹³ Although a landowner with a nonconforming structure may ultimately end up restoring more than 85% of the total project site lot (via onsite and offsite mitigation) if the landowner remodels (thus having to offset dune restoration equal to 85% of total project site lot via onsite *and* offsite mitigation) *and then* reaches the LCP conformance threshold (thus having to reduce Primary Coverage Area and restoring 85% of the project site lot onsite), whereas a landowner with a nonconforming structure who simply redevelops upon certification of the new LCP policies would only have to restore 85% of the project site lot onsite, this differential outcome is justified under the Coastal Act because remodeling of a nonconforming structure *perpetuates* Coastal Act ESHA inconsistencies in a manner that a redeveloped, LCP-conforming structure does not. Thus, it is reasonable for a minor-remodeled nonconforming structure which *later* redevelops and conforms to the LCP to have to mitigate for more ESHA impacts than a nonconforming structure that immediately redevelops to conform to the LCP, in order to account for the additional time of adverse impacts to ESHA resulting from prolongation of the nonconforming structure.

and ensure that a proposed project adequately protects ESHA and other biological resources. Specifically, applications for development that have the potential to impact biological resources, either temporarily or permanently, must submit a Biological Assessment that identifies existing resources, describes all natural features of the site, discusses potential impacts from the proposed development, and identifies avoidance and mitigation measures to eliminate, reduce, and offset those impacts. Additionally, proposed projects must also include a Construction Mitigation and Monitoring Plan to identify and eliminate potential temporary impacts related to project construction. See pages 147-148 of **Exhibit 3** for the proposed general IP ESHA requirements.

Asilomar Dunes Residential Area IP Requirements

The submitted IP includes requirements to carry out the Asilomar Dunes Residential Area LUP policies, including the specific information that proposed development must submit in order to determine and ensure that a proposed project adequately protects ESHA resources. Specifically, all applications for development in Asilomar Dunes Residential Area are required to undertake a Biological Assessment that identifies existing resources, describes all natural features of the site, discusses potential impacts from the proposed development, and identifies avoidance and mitigation measures to eliminate, reduce, and offset those impacts. Additionally, proposed projects must also include a Dune Restoration Plan that includes the provisions for adequately restoring, maintaining, and monitoring dune habitat on site, as well as an offsite mitigation plan when required. Projects must also include a Construction Mitigation and Monitoring Plan to identify and eliminate potential temporary impacts related to project construction, a Grading Plan that restores natural dune contours, and a Post-Construction Runoff Plan that avoids runoff impacts to the dunes. However, in order for the IP to be implemented consistent with the LUP as modified above, suggested modifications to the IP are necessary to mirror the modifications to the LUP for the same reasons as articulated in the above LUP findings. In addition, suggested modifications are also necessary to provide conformity with the LUP's conformance requirement threshold in the Asilomar Dunes Residential Area, as suggested to be modified, including regarding what constitutes an "alteration" to a particular structural component. See pages 151-153 of **Exhibit 3** for these modifications.

As modified, the proposed IP is consistent with and adequate to carry out the LUP's ESHA protection policies (as suggested to be modified).

D. WATER QUALITY AND MARINE RESOURCES

The following sections of the Coastal Act pertain to the protection, maintenance, and enhancement of coastal waters and marine resources:

Section 30230. Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine

organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of wastewater discharges and entertainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging wastewater reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Background

There are a variety of significant ocean and inland water and marine resources in Pacific Grove. The offshore waters are currently protected by a series of federal and state regulations that have been established through several designations, including the federally designated Monterey Bay National Marine Sanctuary (Sanctuary) that encompasses all offshore waters; the California Coastal National Monument that includes all offshore rocks and islands exposed above mean high tide; three designated State Marine Protected Areas (i.e. Asilomar State Marine Reserve, Pacific Grove Marine Gardens State Marine Conservation Area, and Lovers Point-Julia Platt State Marine Reserve); and State Water Resources Control Board (SWRCB)-designated Areas of Special Biological Significance (ASBS) that includes 3.2 miles of coast from the City's border with Monterey to Asilomar Avenue. Although the City has made great strides in implementing a variety of projects and measures to protect water quality, potential significant pollution sources still exist and include urban runoff, erosion, pesticide use, and potential contamination from the failure of existing infrastructure. In addition to offshore waters, Pacific Grove also includes two significant wetland habitats: Majella Slough, which is located near the border of Del Monte Forest; and Crespi Pond, which is located within the Point Pinos Lighthouse Reserve. See **Exhibits 1 and 2** for the locations of the areas mentioned in this paragraph.

Pacific Grove lies within multiple watersheds that include runoff that originates within the cities of Pacific Grove and Monterey. This urban runoff flows via storm drains to multiple outfalls that flow into the Pacific Ocean and the Sanctuary. Pacific Grove maintains approximately 34 outfalls of varying sizes, with the majority of those outfalls flowing into the ASBS between the border of the City of Monterey and Point Pinos. Additionally, this area includes Lovers Point Beach and park, which is a very popular public recreational access area where beach advisories for high levels of bacteria are not uncommon. Maintaining and restoring water quality throughout the Pacific Grove's watersheds, and Pacific Grove's urban landscape in particular, is necessary to protect coastal waters and marine resources, as well as public recreational access.

The Commission's jurisdiction regarding protection of water quality and marine resources broadly overlaps with the responsibility for regulating non-point source water pollution in the coastal zone by the SWRCB and the coastal Regional Water Quality Control Boards (RWQCBs), which are responsible for implementing the requirements of National Pollution Discharge Elimination System (NPDES) that is developed and overseen by the United States Environmental Protection Agency (EPA). Management measures and practices are directed at reducing the volume and the harmful effects of polluted runoff entering Central Coast waterways, lakes, and beaches. These measures are best implemented at the local planning level, since they can be most effective during the design stage of development. All participating local governments, including the City of Pacific Grove, are required to implement these measures and coordinate with the SWRCB and the RWQCB.

The Commission and the Central Coast RWQCB are both working to protect water quality in the southern Monterey Bay area, including Pacific Grove, although each has different, but supportive, authorities and responsibilities in that effort. The Commission has primary responsibility for protecting many coastal resources, including water quality, from the impacts of development in the coastal zone. The SWRCB and RWQCBs have primary responsibility for regulating discharges that may impact waters of the state through issuance of discharge permits, investigating water quality impacts, monitoring discharges, setting water quality standards and taking enforcement actions where standards are violated.

Land Use Plan Update Analysis

The City's LUP update submittal includes a variety of important policies to address water quality issues (see pages 46-49 of **Exhibit 3**). These include policies to: work collaboratively with relevant agencies to reduce pollutants; regulate illegal discharges and reduce the use of potential pollutants such as pesticides and herbicides; maintain, enhance, and restore marine resources and the biological productivity of coastal waters; and so forth. The proposed LUP update also includes water quality protections specific to wetlands, including prohibitions on the alteration of wetlands except for essential restoration and enhancement activities. The submitted LUP update also addresses existing outfalls, including a prohibition on a net increase of existing outfalls and a requirement to pursue opportunities to consolidate and reduce the overall number of outfalls.

The submitted LUP update also includes general development policies that require the protection of natural drainage systems, site planning to address drainage and polluted runoff, minimization of impervious surfaces; and the use of Best Management Practices (BMPs). Specific standards include requirements to: design post-construction BMPs to infiltrate and/or treat storm runoff; minimize impervious surfaces; implement Low Impact Development (LID) design techniques; and more stringent requirements for developments of particular water quality concern, such as gas stations or other industrial development.

The submitted IP includes requirements necessary to carry out these LUP policies, including the specific information that proposed development must submit in order to determine whether a proposed project meets the LUP's water quality protection standards. Specifically, applications for development that have the potential to impact water quality must submit a Construction Plan that adequately addresses any potential temporary impacts during construction (e.g. temporary erosion sediment controls and other BMPs) and a Post-Development Runoff Plan that adequately addresses potential long-term impacts from stormwater runoff (e.g. identification of potential pollutants, description of LID components, and quantification of impervious surfaces).

The Commission recognizes that new development in Pacific Grove has the potential to adversely impact coastal water quality through the removal of native vegetation; an increase in impervious surfaces that could lead to an increase in runoff, erosion, and sedimentation; and the introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources into coastal waters. Coastal Act Sections 30230 and 30231 require that coastal water quality be protected through policies that manage these types of new development impacts.

In particular, new development and redevelopment often results in an increase in impervious surfaces, which in turn decreases the infiltrative function and capacity of existing permeable land on project sites. A reduction in permeable surfaces can lead to an increase in the volume and

velocity of storm water runoff that can be expected to leave the development site. Pollutants commonly found in runoff associated with new development include: petroleum hydrocarbons such as oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter and organic matter; fertilizers, herbicides, and pesticides from household gardening, golf courses, or more intensive agricultural land use; nutrients from wastewater discharge, animal waste and crop residue; and bacteria and pathogens from wastewater discharge and animal waste.

The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity, which both reduce the penetration of sunlight needed by aquatic vegetation that provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; acute and sub-lethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and human diseases such as hepatitis and dysentery.

These impacts reduce the biological productivity and the quality of coastal waters, wetlands, and lakes, and can have adverse impacts on human health. They are particularly important to manage because of the City's extensive marine resources, such as the Sanctuary, as well as significant public access areas where impacted coastal waters may also pose a risk to human health. Thus, maintaining permeable surfaces and managing runoff onsite are critical tools to reduce and limit the impacts of pollutant runoff.

As summarized above, Pacific Grove's submitted LUP update contains a comprehensive set of water quality policies designed to protect and enhance water quality and the beneficial uses of local coastal waters from adverse impacts related to land development. These policies provide for the protection and enhancement of water quality and further provide for the beneficial uses of local coastal waters, which will protect against adverse impacts related to land development, consistent with Coastal Act Sections 30230 and 30231. Specifically, the proposed LUP update includes policies that adequately require development and redevelopment to reduce sources of and/or treat pollution before it enters the storm drain system and ultimately the City's coastal waterways. These policies further direct the City to seek opportunities to consolidate and/or eliminate beach discharge facilities and outfalls where possible to improve the biological productivity and quality of coastal waters of the Sanctuary, consistent with Coastal Act Sections 30230 and 30231. However, one minor modification is required to ensure that development is designed to adequately address runoff. Specifically, the LUP update as submitted relies solely on NPDES regulations for addressing runoff, which may be changed by the EPA and/or the RWQCB without Commission input. Although NPDES requirements are often adequate to meet Coastal Act standards, a modification (see page 47 of **Exhibit 3**) is necessary to make clear that NPDES requirements are the minimum water quality standards that development must meet, and that additional water quality protections, including through the coastal permitting process, may be necessary to adequately protect coastal waters as required by Coastal Act Sections 30230 and 30231.

If modified as described above, the Pacific Grove LUP update would include a comprehensive

and appropriate set of policies that ensure the enhancement and the protection of coastal water quality, consistent with Coastal Act Sections 30230 and 30231.

Implementation Plan Analysis

As previously described, the LCP is set up in such a manner that the detailed regulatory policies for specific issue areas such as water quality are specified in the LUP, and the IP carries out those policies by cross-referencing back to them and specifying the application requirements and other triggers needed for their implementation. In other words, generally speaking, the IP includes standards that implement the policies of the LUP. The IP carries out these policies by requiring projects that have the potential to impact water quality, either temporarily or permanently, to submit a Construction Plan that identifies all areas of construction and potential contaminants, includes appropriate erosion and sediment controls to be implemented, and identifies all other appropriate BMPs that will be incorporated into the project. Applicants are also required to submit a Post-Development Runoff Plan that limits impervious surfaces, describes LID features, and describes permanent BMPs that will be maintained in order to protect water quality over the life of the development. As such, the IP is consistent with and adequate to carry out the LUP.

E. CULTURAL AND ARCHEOLOGICAL RESOURCES

The following section of the Coastal Act includes protections for cultural, archeological, and special communities.

Section 30244. Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Section 30253. New development shall do all of the following: (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

The entire Pacific Grove Coastal Zone is considered and designated as an Archaeologically Sensitive Area in the 1989 LUP. Various surveys of Monterey County found multiple archaeological sites within Pacific Grove, including the existence of a 4,000-year old village site. More recent studies also indicate the likelihood of prehistoric cultural resources. Although potential resources exist throughout the entire coastal zone, the undeveloped parklands along the bluff and the Asilomar Dunes complex are the most sensitive, as these areas have been subjected to relatively less disturbance than the residential neighborhoods on the north end of the Coastal Zone.

With respect to archeological resources in particular, the Monterey Bay region is currently represented by the Ohlone/Costanoan-Esselen Nation (OCEN), which is comprised of over 600 enrolled tribal members of Esselen, Carmeleno, Monterey Band, Rumsen, Chalon, Soledad Mission, San Carlos Mission (Carmel) and/or Costanoan Mission Indian descent. Many descendants of these tribes still live on the Monterey Peninsula.

In terms of historical resources, Pacific Grove has a rich history with origins as a religious retreat, referred to as the “Pacific Grove Retreat.” A unique feature of this early development is the small lots there were originally designed for seasonal use. The unique architectural and visual character of the Pacific Grove Retreat is due to its historic origins as a 19th century coastal Methodist coastal retreat and concentration of early structures that have survived. Over half of the structures in the Coastal Zone portion of the Pacific Grove Retreat are identified in the City’s Historic Resources Inventory. The area between Pacific Street and Grand Avenue is particularly rich in historic buildings and possesses a significant concentration and continuity of sites. There are numerous historical features throughout the City in addition to the Retreat area, including the Asilomar Beach and Conference Grounds that has been designated a National Historical District. See **Exhibits 1 and 2** for the location of these areas.

Land Use Plan Update Analysis

The LUP update addresses the protection of cultural, archeological, and historical resources in a number of ways (see pages 94-101 of **Exhibit 3**). Figure 7 on page 92 of **Exhibit 3** identifies the Coastal Zone as an archeologically sensitive area and Figure 6 on page 80 of **Exhibit 3** points out the Pacific Grove Retreat Area, which the LUP designates as a “Special Community” that deserves special protections.

The LUP includes policies designed to identify, protect, and mitigate for impacts to archeological and cultural resources. The LUP includes policies that require the City to conduct tribal consultations; ensure the protection, preservation, and proper disposition of archeological resources; require development to prepare an archeological report that identifies and mitigates for potential impacts; and a policy to ensure that the City will update its inventory of significant resources and their potential vulnerability to climate change. In order to provide more specificity and better reflect the Coastal Commission’s Tribal Consultation Policy that was adopted in August 2018, modifications are necessary to ensure that the City consults with all federally-recognized tribes and California-recognized tribes, including OCEN. Additionally, modifications are necessary to make clear that tribal concerns are considered to the maximum extent feasible prior to taking any actions on proposed development. See page 94 of **Exhibit 3** for the suggested modifications. As modified, the LUP is consistent with the requirements of Coastal Act section 30244.

The LUP also includes policies designed to identify, maintain, enhance, and protect historical resources throughout the City. The LUP includes directives for the City to implement various programs and efforts to protect historical resources. Specifically, the LUP states that the City will implement loan programs to assist homeowners in maintaining historic homes; maintain and update an inventory of historic resources; and engage citizens and groups in historic preservation efforts. Additionally, the LUP requires the City to conduct design review and requires an evaluation of structures for historical significance for any structure 50 years or older in the Pacific Grove Retreat Area. Finally, the LUP requires development of structures of historical significance to retain the lines of original designs as much as possible and requires compliance with federal historical resource protection standards. Finally, due to the relatively small lots within the Pacific Grove Retreat Area that make this area a Special Community and to encourage the rehabilitation, repair, and maintenance of existing historic structures, policies DES-7 and DES-8 (see page 83 of **Exhibit 3**) allow for nonconforming historic resources within the Pacific

Grove Retreat Area to seek relief from current design standards (e.g. building height, setbacks, lot coverage) if determined to be necessary to protect the historicity of the structure. As proposed, the LUP is consistent with the Coastal Act with respect to the protection of the unique qualities that make the Pacific Grove Retreat Area a Special Community and is adequate to protect historic resources generally.

Implementation Plan Analysis

The submitted IP includes requirements necessary to carry out these LUP policies, including the specific information that proposed development must submit in order to determine and ensure that a proposed project is consistent with the cultural, archeological, and historical resource protection policies of the LUP. Specifically, applications for development that may impact archeological resources must include an Archeological Report that reviews relevant information regarding the area, documents efforts of tribal consultations, describes findings of archeological reconnaissance, discusses potential adverse impacts, and recommends appropriate mitigation to protect significant archeological resources. Applications for development that may impact historical resources must submit a Historic Resources Report that describes the potential resources on site, discusses potential impacts, describes how impacts may be minimized, and explores alternative designs and how they relate to existing historic resources. As such, the IP includes appropriate requirements in order to adequately carry out the cultural, archeological, and historical identified in the LUP, as modified.

F. LAND USE AND DEVELOPMENT

The following sections of the Coastal Act guide land use and development locations and intensities:

Section 30221. Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

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

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

Section 30250(a). New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

***Section 30252.** The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*

Background

The City of Pacific Grove's coastal zone encompasses approximately 458 acres of land, which extends from the border of the City of Monterey to the Del Monte Forest. The inland extent of the coastal zone varies widely and includes areas of remnant sand dunes, residential neighborhoods, and the narrow former railroad right-of-way that cuts through the middle of the City. As defined in the 1989 certified LUP, the City's coastal zone is segmented into one Coastal Zone planning area and five subareas: Area I, which includes both commercial and residential areas; Area II, which is largely residential; Area III, which includes Lovers Point Park, hotel and commercial uses, a senior living facility, a mobile home park, and some additional residential development; Area IV, which is largely public parkland; Area V, which is the railroad right-of-way, and; Area VI, which includes most of the remnant sand dunes, the Asilomar Dunes Residential Area, the Asilomar Dunes Conference Grounds, and the Sunset Service Commercial District. A map of the City's coastal zone, subareas and corresponding land use designations are graphically represented on Figure 6 of the proposed LUP (see page 3 of **Exhibit 1** and page 80 of **Exhibit 3**).

Land Use Plan Update Analysis

The proposed LUP update's sections and policies focus on the land use constraints and opportunities in each coastal zone planning area, as well as the appropriate location and intensity of new development, and ways to assure that development will not have significant adverse effects, either individually or cumulatively, on coastal resources.

The proposed LUP includes a map (Figure 6) and associated text that designate land use categories throughout the City, consistent with the Coastal Act's mandate to indicate the kinds, locations, and intensities of land use (see pages 85-90 of **Exhibit 3**). Most of the proposed land use designations reflect existing uses in each of the five subareas and apply the same land use designations to these subareas that were included in the 1989 certified Land Use Plan. In general, the proposed LUP designates much of the City's blufftop areas and areas of former sand dunes for parks and open space, with the exception of the Asilomar Dunes Residential Area where limited residential development must be allowed as explained in the "ESHA" Section above. Existing hotel sites are designated exclusively for visitor-accommodations uses, and hotel uses are also allowed at the American Tin Cannery Site and within the Sunset Service Commercial area. The railroad right-of-way is designated exclusively for the development of a recreational trail corridor in order to connect Lovers Point to nearby Spanish Bay (located in unincorporated Monterey County) (see **Exhibit 2** for all of these locations). Residential uses are limited to the

areas already utilized for such purposes. Thus, except for the current lack of water described in the “Public Services/Water Supply” Section below, the proposed intensity of and locations of development is generally consistent with Coastal Act Section 30250(a), which requires that development be concentrated in urban areas with available services.

There is one concern, however, regarding language in the proposed LUP that states that “no uses within the Sunset Service Commercial district shall be considered a higher priority than other uses” (see page 88 of **Exhibit 3**). Coastal Act Section 30222 clearly states that visitor-serving uses are generally more favorable and of a higher priority than general commercial or industrial uses, particularly for oceanfront lands. While both visitor-serving and general commercial uses are allowed in the Sunset Service Commercial district in the proposed LUP, to ensure full Coastal Act consistency the language that states that all uses are to be considered the same priority must be deleted (see the suggested modification on page 88 of **Exhibit 3**). This is particularly critical due to the Sunset Service Commercial district’s location near significant public access and recreational facilities such as the California Coastal Trail, Asilomar State Beach, Asilomar Conference Grounds in Pacific Grove, and the Rip Van Winkle Open Space, Spanish Bay, and the trails of Del Monte Forest in adjacent unincorporated Monterey County. While maintaining the existing uses and family-owned businesses in the Sunset Service Commercial district may be desirable, due consideration for higher-priority visitor-serving uses in this subarea should be given in the future.

Finally, one minor but crucial modification regarding development standards such as heights, setbacks, density, etc. is needed to clarify that all such standards represent the maximum limit (or minimum for setbacks) of what may be approved. In other words, all specified maximum buildout numbers (or minimum buildout numbers) do not represent development entitlements that must be automatically granted. The specifics of every project must be analyzed to ensure that coastal resources are protected on a case-by-case basis. Accordingly, a modification is needed to clearly state that maximums must be reduced (or minimums increased) if needed to protect and enhance relevant coastal resources on a project specific basis considering the facts presented. See page 85 of **Exhibit 3** for this suggested modification. As modified, the proposed LUP update will provide appropriate land use and development policies, consistent with the above-cited Coastal Act Sections.

Implementation Plan Analysis

The submitted IP includes requirements necessary to carry out the LUP policies, as modified, including the specific information that an applicant must submit in order to determine and ensure that a proposed project is consistent with the land use designations and policy requirements of the LUP. Specifically, applications for development must include plans that clearly show the project’s consistency with all coverage, height, parking, and setback requirements. The application must also include a “Coastal Community Character Assessment” to demonstrate that the proposed development fits in with the scale and character of all development on parcels located within 150 feet of the proposed project. The IP also includes information requirements specific to certain sites of particular significance, such as Hopkins Marine Station and Asilomar Conference Grounds, to ensure that development at those specific locations address the unique needs and issues related to those sites. As such, the IP includes appropriate requirements to adequately carry out the kinds, intensities, and densities of uses identified in the LUP, as modified.

G. VISUAL RESOURCES

Section 30251 of the Coastal Act provides for the protection and enhancement of coastal visual resources and states:

Section 30251. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Background

The City includes significant and extensive scenic and visual resources of public importance. Two scenic roadways, Sunset Drive and Ocean View Boulevard, as well as the recreational trail, provide extraordinary views of the Monterey Bay and the City's blufftop parklands. Inland of the roadways and trail are sweeping views of coastal dunes, as well as views of the City's unique historical cottages. Many residential streets, particularly between 1st Street and 17th Street, are oriented to provide ocean views to motorists and pedestrians traveling from inland locations toward the ocean. Moreover, those recreating on the ocean (e.g. kayakers, boaters, surfers, etc.) enjoy inland views of the bluffs, dunes, and the unique residential landscape, which are also valuable coastal resources that must be protected. See **Exhibit 1** for a map of these locations and **Exhibit 2** for area photos.

That said, there are also areas of the City where the visual landscape is degraded and could be restored as called for in Section 30251 of the Coastal Act. Specifically, significant areas of pre-coastal riprap and other unnatural looking shoreline armoring that detracts from the natural bluff landscape are located throughout the City. Large areas of nonnative and invasive plants exist on both public parkland and private property. Various elements of the Recreational Trail could be improved to restore its scenic quality, including providing appropriate screening for lift station infrastructure, trash receptacles, and parking areas, as well as efforts to consolidate and limit regulatory signage. Significant fencing, both permitted and unpermitted, is present throughout the City and detracts from the natural visual landscape. Fencing is particularly prevalent and problematic in natural dune areas and along the bluffs where manmade features should be limited and, at the very least, be minimized and designed to blend into the natural environment.

Land Use Plan Update Analysis

The LUP update addresses the protection of views of Monterey Bay, bluffs, and dunes in a number of ways (see pages 54-56 of **Exhibit 3**). The LUP also includes a map (Figure 4) on page 53 of **Exhibit 3** identifies important view corridors from residential streets and also designates certain areas as scenic, including all areas seaward of Ocean View Boulevard and Sunset Drive. The LUP update includes a section that is focused entirely on policies necessary to protect scenic and visual resources, including by identifying certain areas in the City as scenic, and affording those areas special protections. These policies include requirements for development to: minimize the alteration of natural landforms, locate new utilities underground, provide

appropriate screening and native plantings, ensure that structures (including fences) are subordinate to and blend into the natural environment, retain visually important trees, and site and design structures to protect existing views. The LUP also includes other policies throughout the document that protect public views within the context of protecting another coastal resource. For example, Policy HAZ-13 (page 41 of **Exhibit 3**) requires new shoreline protective devices to minimize the alteration of and be designed to blend into natural landforms, while Policy HAZ-12 (page 41 of **Exhibit 3**) requires replacement or augmentation of existing armoring to mitigate visual impacts. Policy DES-4 (page 83 of **Exhibit 3**) requires height and setback limitations in scenic areas, and Policy DES-6 (page 83 of **Exhibit 3**) requires that exterior lighting limit offsite glare.

However, the proposed LUP update does not provide full protection for visual resources associated with dunes, does not address potential impacts from commercial signs, and does not adequately address specific visually degraded areas, including Hopkins Marine Station facilities and the National Oceanic and Atmospheric Administration (NOAA) site on Lighthouse Avenue. As such, the proposed LUP update falls short of achieving full consistency with Coastal Act Section 30251 and thus modifications must be made to ensure LUP conformance with this policy.

With respect to the dune landscape, Figure 4 highlights certain important views throughout the City, but fails to identify the Asilomar Dunes Residential Area as a protected scenic area. The unique natural dune landscape, as explained in more detail above, is an extremely rare and important visual resource that must be afforded special protection. Thus Figure 4 must be modified to specifically designate this area as “scenic.” Additionally, the LUP proposes to increase the height limit on structures in the dunes along Sunset Drive from 18 feet (which is the height limit in the currently certified 1989 LUP) to 20 feet. This will lead to larger homes in the most visually prominent and sensitive area of the dunes, which is not consistent with Coastal Act Section 30250 (relative to the status quo) and must be modified. Moreover, the LUP as proposed only limits structures to 20 feet in height on parcels that share a common boundary with Sunset Drive; under the proposed LUP, structures in the Asilomar Dunes that do not share a common boundary with Sunset Drive are allowed a height up to 25 feet. However, the purpose of the currently certified 18-foot height limitation along Sunset Drive is to protect dune views as seen from Sunset Drive and the recreational trail, and to ensure that structures visible from these designated scenic viewing areas appropriately blend into, and are subordinate to, the natural dune landscape. Thus the structures themselves, not the parcels on which the structures sit, are the target of the height limitation. There are many structures that would be clearly visible from Sunset Drive and the Recreational Trail even though the parcel itself does not share a common boundary with Sunset Drive, particularly if those structures were allowed to reach heights of 25 feet. Thus in order to protect the visual aesthetic of the natural dune landscape as seen from these important public viewing areas, a suggested modification retains the existing 18-foot height limit for all structures in the dunes that are visible from Sunset Drive and the recreational trail. Additionally, fencing within the dunes (other than fencing that is needed to delineate approved Outdoor Use Areas from dune habitat areas – see “ESHA” section above) must be minimized and limited solely to fencing that is necessary to protect the dunes. Fencing that is solely used to delineate property line boundaries, provide additional privacy, or for decorative purposes is inappropriate and antithetical to the natural dune aesthetic and is also inconsistent with Section 30251 of the Coastal Act, and thus should be prohibited. The various purposes for such fencing

identified above do not justify causing significant adverse impacts to the natural dune landscape as a significant visual coastal resource. Thus LUP modifications to designate the Asilomar Dunes Residential Area as scenic, limit the height of structures visible from Sunset Drive and the recreational trail, and prohibit most fencing unless necessary to protect dune habitat are necessary to achieve full Coastal Act consistency. See pages 73 and 74 of **Exhibit 3** for these suggested modifications.

Additionally, both Hopkins Marine Station and the NOAA site on Lighthouse Avenue are two visually prominent areas that currently contain numerous elements that degrade the natural landscape, which should be enhanced where possible as called for by the Coastal Act. Specifically, both sites include widespread areas of invasive plants and extensive chain link fencing, both of which adversely impact dune and ocean views. The aesthetic of both sites could be substantially enhanced visually through the removal of invasive plants and restoration with native dune species, as well as by minimizing fencing as much as possible. Replacement fencing, if deemed necessary, must be replaced with fencing that blends better into the natural environment in these sensitive coastal areas. Policies to address these specific sites are therefore necessary and are included in the proposed LUP (see page 70 of **Exhibit 3**).

With respect to other areas of the City, particularly areas inland of Ocean View Boulevard and the Pacific Grove Retreat Area, these areas primarily consist of relatively densely developed neighborhoods located inland of the Recreational Trail. Views from the Recreational Trail would be generally seaward in these areas, and away from the residential development. Therefore less restrictive standards for the protection of coastal visual resources, and minor exceptions to height limits in these areas as proposed can be considered appropriate, but modifications are necessary to allow such exceptions only if public views are protected (see pages 82 and 83 of **Exhibit 3**). Additionally, the LUP as proposed does not include any policies that specifically address commercial signs, which have the potential to impact public views, particularly the commercial areas in and around Lovers Point Park. Thus a modification to ensure that any commercial signs are sited and designed to protect scenic qualities is appropriate – see page 82 of **Exhibit 3**. As modified, the proposed LUP update will protect the scenic views and visual resources of Pacific Grove’s parks, beaches, dunes, and open space areas, consistent with Coastal Act Section 30251.

Implementation Plan Analysis

The submitted IP includes requirements necessary to carry out the visual resource protection LUP policies (as proposed to be modified), including the specific information that proposed development must submit in order to determine and ensure that a proposed project protects scenic and visual resources as required by the LUP. Specifically, any application for development that has the potential to impact public views must submit a site-specific visual resource analysis that identifies existing views and provide visual simulations of the proposed project, an exterior lighting plan that identifies and minimizes all proposed lighting features, and a landscaping plan that utilizes drought-tolerant plants that are appropriate for the area. Two minor IP modifications are necessary to fully ensure the LUP policies are appropriately carried out. First, the definition of “building height” does not specify that height shall be measured from the existing grade that has been legally established, which could potentially lead to site grading in order to benefit from an altered site elevation. Second, the site-specific visual analysis does not specifically state that an applicant may be required to develop visual simulations, erect story poles, or analyze surrounding development if the City determines that this information is

necessary to understand the visual impact of a particular development. Accordingly, modifications are necessary to explicitly state that building height is measured from legally established existing grade, and to require additional visual impact information if deemed necessary (see pages 145 and 146 of **Exhibit 3**). As modified, the proposed IP is adequate to carry out the visual and scenic resource protections of the LUP, as amended.

H. PUBLIC ACCESS AND RECREATION

The following sections of the Coastal Act are among those that provide for the preservation and enhancement of public access and recreation in the coastal zone.

***Section 30210.** In carrying out the requirement of Section 24 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people, consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

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

***Section 30212(a).** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby; or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

***Section 30214(a).** The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following: (1) Topographic and geologic site characteristics; (2) The capacity of the site to sustain use and at what level of intensity; (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses; (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter. (b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution. (c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and*

encourage the use of volunteer programs.

The following sections of the Coastal Act are among those that pertain to the protection, enhancement, and provision of recreational opportunities:

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

Section 30221. *Oceanfront land suitable for recreational uses shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for the area.*

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

Section 30224. *Increased recreational boating use of coastal waters shall be encouraged in accordance with this division by developing dry storage areas, increasing public launch facilities, providing additional berthing space in existing harbors, limiting non-water dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.*

Section 30234. *Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.*

Background

The City's Coastal Zone contains an expansive network of trails, bike paths, parkland, beaches, and vertical accessways that provide a wide range of public access and recreational opportunities for both local residents and visitors. Among these features include the extremely popular sandy beaches at Lovers Point and Asilomar State Beach. Various rocky outcroppings and tidepools provide great wildlife viewing, including at the recently restored Great Tidepool Site. Caledonia, Jewell, and Greenwood Parks provide important additional greenspace within the residential neighborhoods, and the Point Pinos Reservation Grounds provide access to the historic lighthouse, nearby trails, and a public golf course. The Asilomar State Conference Grounds provides public dune trails, lower-cost overnight lodging, and an important community center capable of hosting a variety of events and conferences. Perhaps the City's most defining feature, however, is the extensive network of trails, benches, overlooks, interpretive signs, and open space along the largely publicly-owned blufftop that stretches the entire length of the City's shoreline from the City of Monterey border to the Del Monte Forest. This trail network is a jewel of the California Coastal Trail. Other important features of the Pacific Grove shoreline include

the relative abundance of free public parking, public restrooms that are available at Lovers Point and Crespi Pond, and visitor-serving amenities such as restaurants, a children's pool, and recreational equipment rentals at Lovers Point, not to mention access to rocky outcrops and sandy beaches. See **Exhibits 1 and 2** for the sites mentioned in this paragraph.

The City faces various challenges with respect to maximizing, maintaining, and retaining existing public access and recreational opportunities. Specifically, ongoing coastal erosion threatens the existing trail network and associated public access amenities, including parking areas. Moreover, conflicts exist between maintaining and maximizing public access while still providing for the protection of sensitive biological resources in certain areas. Additionally, there are areas within the City where public access and recreational opportunities could be enhanced. Specifically, additional visual and physical access should be established at Hopkins Marine Station as this development currently interferes with access to the shoreline (see **Exhibits 1 and 2**), while still providing for the research needs of that facility. Likewise, trail improvements could be made at certain pinch points, notably near Crespi pond and Esplanade Park, where trail users are often forced to walk in the street. A separate and paved bike path is available from the City of Monterey border to Lovers Point, but bike path improvements, or at a minimum bike lanes, should be provided along the shoreline through the rest of the City. Finally, the City's Coastal Zone also specifically includes the railroad right-of-way with the potential for reuse as a public recreational trail that could, with some improvement, provide access through the heart of the City.

Land Use Plan Update Analysis

The proposed LUP update includes, among other things, the goals, objectives, and policies designed to protect, maintain, and improve a multitude of public access and recreational opportunities along the Pacific Grove shoreline and its parks (see pages 119-122 of **Exhibit 3**). With respect to public access and recreation, the proposed LUP update includes policies that are generally consistent with Coastal Act Sections 30210, 30211, 30212, 30212.5, 30213, 30214, 30220, and 30221.

The proposed LUP update policies identify and designate many of the areas discussed above (e.g. the recreational trail, Asilomar State Beach, Point Pinos Lighthouse Grounds, etc.) as open space recreational areas where only low-intensity public recreational and other appropriate ancillary uses are allowed. The proposed policies within the Public Access and Recreation section of the LUP specifically require a continuous coastal accessway to be maintained to the maximum extent feasible and require the City to consider improvements to access, particularly non-automotive access, in all CDP applications for development near trails, beaches, or open space. The proposed LUP update also contains policies encouraging a trail within the railroad right-of-way that would connect Lovers Point and Spanish Bay (located just downcoast of the City in unincorporated Monterey County), and prohibiting development that would obstruct such a trail (which includes the existing public access trail located between the Fish Wise restaurant and Pacific Grove Self Storage building, that has been utilized by members of the public for decades). The proposed LUP also includes policies encouraging "Complete Streets," meaning maintenance of a continuous bike path along the City's shoreline, provisions requiring bike racks, maintenance of existing public parking areas, etc.

Despite the relative abundance of free public parking throughout the City, the popularity of

Lovers Point Park with tourists and visitors often leads to a relative scarcity of parking in this particular area. Additionally, due to existing commercial uses and the park's relative proximity to the City's downtown business district (located outside of the Coastal Zone), parking is often limited and can lead to the decreased public access opportunities when visitors are unable to find parking. In order to increase visitor turnover and allow access to a greater number of visitors, as well as to discourage overuse of Lovers Point and encourage the public to utilize other areas of the City's parklands, the City has considered implementing metered parking. While paid parking (or other parking restrictions) may sometimes discourage access, in this particular case paid parking in the area between Forest Avenue and Sea Palm Avenue during peak use hours may be appropriate due to the relative abundance of free parking elsewhere along the coast, as long as parking fees are solely utilized to provide public access improvements elsewhere. The proposed LUP update makes it clear that if the City wishes to institute any parking restrictions in the Coastal Zone (including a paid parking program), a CDP is required and must be limited in scope as explained above (see page 122 of **Exhibit 3**).

As summarized above, Pacific Grove's submitted LUP contains a comprehensive set of policies designed to protect, maintain, and maximize public access and recreational opportunities throughout the City, consistent with the Coastal Act's public access and recreation policies. However, one minor modification is required to ensure that it is clear that any development that impacts access, including changes to hours, types, or location of existing access (including parking), requires a CDP (see pages 69 and 70 of **Exhibit 3**). As modified, the proposed LUP public access and recreation policies are consistent with above-cited public access and recreation policies of the Coastal Act.

Implementation Plan Analysis

The LCP is set up in such a manner that the detailed regulatory policies for specific issue areas, such as public access and recreation, are specified in the LUP, and the IP carries out those policies by cross-referencing back to them and specifying the application requirements and other triggers needed for their implementation. In other words, generally speaking, the IP includes appropriate standards to implement the policies articulated in the LUP. The submitted IP includes requirements necessary to carry out the LUP's public access and recreation policies, including the specific information that proposed development must submit in order to determine and ensure that a proposed project maximizes public access as required by the LUP. For example, any application for development that has the potential to impact public access, either temporarily or permanently, must submit a Public Access Plan that identifies existing access and recreational opportunities, analyzes impacts to such access, and provides mitigation in order to reduce or offset those impacts. As such, and as proposed, the IP is consistent with and adequate to carry out the LUP, as amended.

I. LOW-COST VISITOR ACCOMMODATIONS

In addition to the public access and recreation policies cited above, the following section of the Coastal Act addresses the specific need for lower-cost visitor and recreational facilities:

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

Neither the commission nor any regional commission shall either: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low and moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Background

A critical aspect of the Coastal Act's public access policies is the protection and provision of lower-cost overnight visitor accommodations. Although spending a day at the beach, viewing wildlife, or walking the coastal trail is inherently a low- or no-cost venture, the ability to stay overnight at a reasonable cost is a huge barrier for the vast majority of the public, particularly families, who do not live near the coast. This is particularly critical for lower-income families that do not have equal access to recreational opportunities along California's coast in this respect. Generally, there is a significant lack of lower-cost overnight accommodations along the coast, particularly hotel rooms, and new overnight accommodations projects are often higher cost.

However, Pacific Grove is unique in that the City maintains several lower-cost accommodations options, including the Asilomar Conference Grounds, several moderately-priced inns and motels, and several small bed-and-breakfast lodging establishments. Protection of these existing lower-cost options is critical. Additionally, new high-cost hotel development within the City is possible, particularly at the American Tin Cannery site in the near term and possible future endeavors within the Sunset Service Commercial district (see **Exhibits 1 and 2** for these locations).

Moreover, utilizing the existing residential areas for short-term rentals (STRs) can provide lower-cost options, particularly for families or large groups that typically would need to rent several hotel rooms in order to accommodate a greater number of guests. The City of Pacific Grove has developed an STR ordinance, although that ordinance has never been submitted or approved by the Commission, and thus is not in effect in the City's Coastal Zone. Because changes to regulatory rules regarding STRs is a change in the intensity of use and access to the coast, such regulations constitute development and must be approved by the Commission either through the LCP or CDP context to be legally enforceable. Thus, the current STR landscape within Pacific Grove is that STRs are an allowed, and largely unregulated, residential use throughout the Coastal Zone. While the City has the authority to require ministerial permits, such as a business license, and collect taxes on STRs, the City cannot deny residents within the coastal zone the ability to utilize their home as an STR based on the provisions of its current ordinance unless and until the City submits, and the Commission approves, an LCP amendment (or standalone CDP) to regulate STRs in the Coastal Zone.

Land Use Plan Update Analysis

The proposed new language in the LUP update acknowledges the need to provide lower-cost visitor-serving facilities, particularly overnight accommodations. The LUP includes policies that protect existing lower-cost accommodations and require new high-cost accommodations to mitigate for impacts to the availability of lower- and moderate-cost accommodations on a project-specific basis. Finally, the LUP recognizes that STRs play a critical role in providing

lower-cost accommodations and specifically allows for such rentals as long as STRs do not unduly burden residential neighborhoods. These policies (see page 122 of **Exhibit 3**) will ensure that the existing lower-cost facilities are not adversely affected, and that new high-cost development appropriately mitigates for potential impacts, consistent with the intent of Coastal Act Section 30213. However, one minor modification is necessary to ensure that overnight accommodations are not inappropriately converted to residential or any other type of use that would not be available to the general public. Thus, a modification is proposed to reserve all overnight accommodations for transient use only (i.e., 30 days or less – see page 122 of **Exhibit 3**). As modified, the proposed LUP update is consistent with Coastal Act Section 30213.

Implementation Plan Analysis

Although the submitted IP includes some requirements to carry out the LUP's low-cost visitor accommodation policies, the IP is not specific enough to adequately address this critical issue. Modifications are necessary to ensure that existing lower-cost accommodations are protected, and that new high-cost accommodations either include lower-cost options, when appropriate, or otherwise provide appropriate mitigation. With respect to new high-cost accommodations, the proposed IP includes requirements to analyze the feasibility of providing lower-cost accommodations onsite. Modifications are necessary to include in the analysis whether certain amenities designed to serve as a lower-cost option for families (e.g. additional beds, kitchen facilities, suites, etc.) can be provided, which could ultimately make a seemingly moderate-cost room with respect to price actually serve as a lower-cost option considered more holistically. Modifications are also necessary to identify with greater specificity the mitigation that projects must provide when either replacing existing lower-cost accommodations (i.e. replacement with high-cost units requires a one-to-one replacement while replacement with moderate-cost units requires mitigation commensurate with the impact, depending on the amenities provided and final cost) or when proposing new high-cost units (maximize number of lower-cost units provided with a minimum of an equivalent of 25% of the number of high-cost units). The IP strongly encourages lower-cost units to be provided on- or offsite, but also provides the option for projects to pay an equivalent in-lieu fee. Modifications are also necessary to establish an in-lieu fee program that requires the City to manage funds exclusively for the development of lower-cost accommodations that are available to the general public.

The suggested modifications provide the floor for low-cost mitigation and allow the City discretion to require *more* lower-cost units. The Commission has in the past typically required mitigation for *at least* 25% of new higher cost rooms created, including through prior LCP policies as well as in individual projects.¹⁴ The Commission thus, as a matter of policy, has sought to ensure that new overnight accommodations in the coastal zone provide at least 25% lower-cost accommodations to help maximize public access and recreational opportunities, and particularly lower-cost opportunities, as required by the Coastal Act. Requiring provision of lower-cost accommodations has ensured that, even as the trend toward higher-cost hotel rooms in the coastal zone continues, *some* lower-cost overnight accommodations have been provided to mitigate for the impacts of said higher-cost overnight accommodations. Despite that effort, the Commission has still found that the supply of lower-cost accommodations typically does not

¹⁴ See for example Newport Beach LUP Amendment NPB-MAJ-1-07; CDP A-5-LGB-14-0034 (Laguna Beach Golf and Bungalow Village, LLC); CDP 5-13-0717(1429 Hermosa, LLC); CDP 5-15 -0030 (Sunshine Enterprises, LP); and CDP 3-16-0287 (Front Street Cottages).

come close to meeting the need and demand for such accommodations to provide those of lesser means the opportunity to stay at the coast. Thus here, consistent with past Commission actions and guidance, as justified by the Coastal Act, the suggested modifications to require mitigation for at least 25% of new rooms created is appropriate and allows the City the discretion to require more. See pages 160-162 of **Exhibit 3** for these suggested modifications.

Correspondence was received at the July Commission hearing that raised issues with a particular hotel project that has been proposed at the American Tin Cannery site, an area on the inland side of Ocean View Boulevard near the border of Pacific Grove and the City of Monterey just downcoast of the Monterey Bay Aquarium. Specifically, the correspondence stated that the proposed project is controversial and the LCP should be postponed until more information is known about the project. However, the LCP sets forth the parameters for which future development must meet and determining specific details of a particular project during the LCP phase is premature. The LCP as proposed includes development standards for all overnight accommodation projects with regard to height, parking, setbacks, etc. at that site, and the LCP also includes specific requirements for determining appropriate lower-cost visitor accommodations mitigation for hotel projects specifically. Any future project at the American Tin Cannery site will need to meet these LCP standards.

With respect to STRs, the IP specifies that STRs are an allowed residential use, but the proposed IP does not include the operational standards necessary to ensure that STRs do not unduly burden residential neighborhoods, which can lead to unnecessary and avoidable conflicts with neighbors. Thus, modifications are necessary in order to add appropriate standards to regulate STRs. The City has subsequently requested that the parameters set forth in their existing STR ordinance, which has not yet been approved by the Commission and is therefore not yet legally enforceable in the Coastal Zone, be included in this LCP update. These requirements include a number of appropriate standards that help minimize the impact of STRs on residential neighborhoods, including limiting the number of STRs to one per parcel, prohibiting STRs from being utilized for commercial functions (such as auctions, weddings, temporary events, etc.); limiting the number of persons allowed in each STR; and parking standards for STRs.

Moreover, a limit to the density of STRs in the Coastal Zone is also necessary in order to protect the residential character of neighborhoods. Currently, approximately 60 STRs exist inside the Coastal Zone. The City proposes to implement a 55-foot “zone of exclusion,” where no STR can be located within 55 feet of an existing STR. In more densely built residential neighborhoods, the 55-foot exclusion zone would translate to an STR being allowed every third house on a particular block. The zone of exclusion will help limit overall STR density and ensure that one particular area will not be overwhelmed with STRs and potentially lose its residential character, while still allowing for a reasonable number of STRs throughout the Coastal Zone. See page 162 of **Exhibit 3** for these suggested modifications.

As modified, the proposed IP is consistent with and adequate to carry out the low-cost visitor accommodations policies of the LUP, as amended.

J. PUBLIC SERVICES/WATER SUPPLY

The following sections of the Coastal Act are among those that pertain to the management of available water supplies:

Section 30250(a). New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30254. New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted, consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway 1 in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded, except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services, and basic industries vital to the economic health of the region, state, or nation, public reaction, commercial recreation and visitor-serving land uses shall not be precluded by other development.

Water Supply Background

Following severe drought conditions in the late 1970's, the Monterey Peninsula Water Management District (MPWMD) was formed to regulate water resources on the Monterey Peninsula. The MPWMD regulates the collection, storage, distribution and delivery of water within the 170-square-mile area of the district. Currently, all of the water used within the MPWMD comes from the following sources: the Carmel River, wells in the Carmel Valley, and the Seaside Groundwater Basin. The MPWMD allocates water from these sources to various water companies and smaller local jurisdictions, including the City of Pacific Grove.

The largest water distribution system in the Monterey Peninsula is operated by the California-American Water Company (Cal-Am), which provides water to nearly 95 percent of the 112,000 residents in the MPWMD. Cal-Am provides the vast majority of its water to its users through groundwater extractions and diversions from the Carmel River, including via the Los Padres Dam. Adverse impacts on the Carmel River from Cal-Am water withdrawals have been well documented¹⁵ and are discussed in further detail below. The River, which lies within the approximate 250-square-mile Carmel River watershed, flows 35 miles northwest from the Ventana wilderness in Big Sur to the Pacific Ocean. Surface diversions and withdrawals from the River's alluvial aquifer have had significant impacts on riparian habitat and associated species, particularly in the River's lower reaches.¹⁶ This includes adverse impacts to two federally threatened species, California red-legged frog (*Rana draytonii*), listed as federally-threatened in

¹⁵ See, e.g. 2005 Watershed Assessment and Action Plan for the Carmel River, Carmel River Watershed Conservancy; The Carmel River Watershed Assessment and Action Plan 2016 (update to the 2005 Plan).

¹⁶ See, for example, Instream Flow Needs for Steelhead in the Carmel River: Bypass flow recommendations for water supply projects using Carmel River Waters, National Marine Fisheries Service, June 3, 2002.

1996, and steelhead (*Oncorhynchus mykiss*), listed as federally-endangered in 1997. In particular, water diversions and withdrawals reduce the stream flows that support steelhead habitat and the production of juvenile fish, especially during dry seasons.

In 1995 the State Water Resources Control Board (SWRCB) issued Order 95-10, in response to complaints alleging that Cal-Am did not have a legal right to divert water from the River and that the diversions were having an adverse effect on the public trust resources of the River. The SWRCB found that Cal-Am has a legal right only to withdraw about 3,376 acre-feet per year (afy), and that the Cal-Am diversions were having an adverse effect on the lower riparian corridor of the River, the wildlife that depend on this habitat, and the steelhead and other fish inhabiting the River. SWRCB thus ordered Cal-Am to extract no more than a maximum of 11,285 afy from the River, and to implement measures to minimize harm to public trust resources and to reduce withdrawals. Existing withdrawals continue to have adverse effects on the coastal resources of the River, and it has not been determined what the “safe yield” of the Carmel River might be so as to assure protection of the River’s habitat resources.¹⁷

In October 2009, SWRCB issued Order WR2009-0060, which prescribes a series of additional cutbacks to Cal-Am’s pumping from Carmel River from 2010 through December 31, 2016. Specifically, it includes a schedule for Cal-Am to reduce diversions from the Carmel River, bans new water service connections, bans increased use of water at existing service connections resulting from a change in zoning or use, and establishes a requirement to build smaller near-term water supply projects. Although Cal-Am failed to cease its illegal diversions by the end of 2016, SWRCB issued Order WR2016-0016 that extended to deadline until December 31, 2021 due to Cal-Am’s efforts to reduce its unlawful diversions and implement a variety of fish conservation and habitat restoration projects. The Order also recognizes that various agencies and stakeholders are actively pursuing alternative water supply projects, including desalination project options, groundwater recharge, conservation, and other options for the Monterey Peninsula, so that withdrawals from the Carmel River could be reduced or perhaps even be eliminated over time. However, although some of these projects have come to fruition, there have been significant challenges in identifying an acceptable project for all stakeholders, including one that could be successfully permitted by state and local entities.¹⁸

Given the state of both the Carmel River and the Seaside Basin (which is overdrafted) and the current SWRCB Orders, there is little or no water on the Monterey Peninsula to allocate for new development. Consequently, Pacific Grove (as well as Monterey County and the other cities within Cal-Am’s service area) maintains a waiting list for new water connections. At this time, there is no definite timeline for a new supply of water. Cal-Am and the MPWMD are currently searching for additional water supplies and possible alternative strategies include implementation

¹⁷ Neither Cal-Am’s legal right (3,376 afy) nor the Order 95-10 maximum (11,285 afy) is meant to imply safe yield.

¹⁸ In addition, the City of Pacific Grove has recently completed the Pacific Grove Local Water project, which is a water recycling facility that is designed to provide 125 acre-feet per year of non-potable water for irrigating the City of Pacific Grove's 18-hole golf course and parkland. The facility includes headworks/influent screening, biological treatment with a suspended growth/activated sludge process, membrane separation, UV disinfection, chlorine addition, recycled water storage utilizing the refurbished Point Pinos concrete tanks and a recycled water distribution pump station, along with ancillary improvements. The facility features advanced noise and odor controls, and has an architectural design that blends in with the surrounding community.

of groundwater injection (e.g., storage of excess water from the Carmel River in the Seaside Coastal Basin during winter months), desalinization of seawater, wastewater recycling (i.e., using reclaimed wastewater for irrigation purposes and/or groundwater injection), and additional water conservation efforts that include retrofitting or replacing water-using appliances and fixtures and drought-resistant landscaping.

Given that water is an important coastal resource, especially within the Monterey Peninsula area where water supplies are extremely limited, it is vitally important that the LUP contains policies that adequately regulate development to protect water resources. These policies must be consistent with Coastal Act policies requiring that new urban development be located in urban areas with adequate public services, and that give priority to certain types of development when public services are limited.

Wastewater Background

Wastewater treatment and disposal for Pacific Grove is provided by the Monterey One Water treatment plant (formerly the Monterey Regional Water Pollution Control Agency). The treatment plant is located two miles north of the town of Marina. Each day 21 million gallons of wastewater is processed at the plant; total plant capacity is approximately 30 million gallons per day (mgd) and the plant currently processes approximately 18.5 mgd. Additionally, Monterey One Water operates a water recycling facility and manages the distribution system under contract from the Monterey County Water Resources Agency. Sixty percent of incoming wastewater is recycled. In recent years, as much as four billion gallons of water has been delivered to farmers in the Northern Salinas Valley annually.

Land Use Plan Update Analysis

The proposed new language in the LUP update acknowledges the resource problems with the Cal-Am water supplies on the Monterey Peninsula, including the adverse impacts on resources due to Carmel River and Seaside Basin withdrawals, and subsequent SWRCB actions to curb such problems. In addition, it is imperative that projects not rely on unsustainable sources of water, such as increased groundwater from a particularly wet year, which may lead to other coastal resource impacts. As such, the proposed LUP requires new development to clearly demonstrate that there is an adequate, long-term, and sustainable water supply to serve the proposed development. In addition, the LUP requires the City to reserve a sufficient quantity of water, if available, to serve Coastal Act priority uses, including coastal-dependent, public access, and visitor-serving uses. This proposed new policy ensures not only that scarce water should be allotted to coastal priority uses, but that water allotments should also avoid adverse effects on coastal resources. Additionally, the LUP contains policies that require development to include water-conserving measures to offset additional water use as much as possible. Finally, the LUP contains policies to encourage the City to: pursue water-saving measures, utilize reclaimed wastewater, develop new sources of water, and design its infrastructure to be resilient from impacts due to sea level rise and other coastal hazards to ensure future water security. See pages 104-110 of **Exhibit 3** for the proposed policies. These policies will ensure that the existing resource impacts associated with the Cal-Am water supply are addressed, consistent with the intent of Coastal Act Sections 30250(a) and 30254.

The LUP also includes new language regarding current wastewater collection, conveyance, and treatment, and adds explicit policies that require development to demonstrate/verify that adequate wastewater services are available to support the proposed development, including an analysis of alternatives to demonstrate adequate wastewater treatment capacity. Accordingly, the proposed LUP wastewater policies are consistent with Coastal Act Sections 30250(a) and 30254 regarding public services requirements because they ensure that development must show that it will be served by adequate wastewater treatment capacities before it can be approved.

Finally, the proposed LUP includes policies designed to improve transportation and circulation, both motorized and non-motorized, through the City's coastal zone. These policies include a provision encouraging "Complete Streets" (meaning maintenance of a continuous bike path along the City's shoreline), increasing public transit options, maintaining a continuous bike path, utilizing the railroad right-of-way as a continuous recreational trail, requiring new development to provide bike racks, and preventing project to offset temporary construction related traffic impacts. These proposed new policies will ensure that future development will not lead to additional circulation impacts or concerns. As proposed, the LUP is consistent with Coastal Act Sections 30250(a) and 30254 regarding circulation and transportation.

Implementation Plan Analysis

The submitted IP also includes requirements necessary to carry out these LUP policies, including the specific information that proposed development must submit in order to determine and ensure that a proposed project will not adversely impact public infrastructure. Specifically, applications for development that has the potential to impact public infrastructure must submit a Water Supply and Conservation Plan that includes documentation that there are adequate public services, including both water and wastewater service, to serve the proposed development and includes a water conservation plan that identifies and maximizes the water-conserving fixtures, equipment, and landscaping that will be incorporated into the project. Regarding transportation, the submitted IP also requires proposed development to submit information to ensure that projects will not adversely impact traffic and circulation, including submitting plans that provide for adequate parking and temporary traffic handling plans for construction impacts. As proposed, the City's IP is consistent with and adequate to carry out the water supply, wastewater supply, and transportation policies of the LUP, as amended.

K. INTERPRETIVE GUIDANCE

Suggested modifications are also included to help clarify how certain terms should be interpreted. Specifically, suggested modification are included to state that the terms "should" and "may" should be interpreted as mandatory, unless there is a compelling reason to do otherwise. Staff believes that such interpretive guidance is necessary and helpful to provide the City with the discretion to require such discretionary standards. For example, LUP Policy BIO-24 states that development within Asilomar dunes "should" be clustered. LUP Policy DES-8 states that lighting along walkways "should" be mounted on low bollards or ground buttons. In both examples staff believes that requiring such standards in most cases would be appropriate and thus should be required absent some other compelling reason, and that the suggested modifications provide the appropriate direction to understand how to make such determinations.

Without the suggested interpretive language stating that the language is mandatory in most cases (absent some other compelling reason), the City may not interpret and apply the language in a consistent manner, and may choose to not apply it for unspecified reasons. Both examples also recognize that there may be valid reasons not to apply the standards in specific cases, such as if clustering development would cause development to be located in areas that contain sensitive species or low lighting would create a safety hazard. The suggested guidance still allows the City discretion to provide for deviations from certain policies in specific cases, but simply requires the City to find a valid reason to do so.

L. CDP REQUIREMENTS, PROCEDURES, AND ANALYSIS OF PROPOSED IP

The Commission may only reject a proposed IP submittal if it does not conform with or is inadequate to carry out the Land Use Plan (Section 30513). When the Commission is considering both an LUP and an IP amendment at the same hearing, and the Commission approves the LUP amendment, the standard of review is whether the IP conforms with and is adequate to carry out the newly certified LUP.

In this case and as explained in more detail in the sections above, the proposed IP elements are similar to the proposed LUP, with the exception of several implementing standards that are not in the LUP, including the necessary findings, application requirements, and specific reports that must be included when applying for and processing a CDP (for ESHA, wetlands, hazards, public viewshed identification, archaeological resources, public access management, etc.). Although IP documents often include separate zoning requirements, in this case the LUP includes robust and detailed land use designation policies and standards that are adequate to address issues that typically would need greater specificity in IP zoning ordinances. Additionally, the City's current municipal code ordinance is subject to certain voter initiatives that are inconsistent with the 1989 LUP's land use designations and the land use designations as currently proposed. For example, the City's municipal code ordinance allows for residential uses in areas of the City that are currently designated exclusively for visitor-serving and visitor-accommodation uses. If the existing code were included in the IP, the zoning ordinance could not be found consistent with the LUP and the City would be unable to modify certain sections of the zoning ordinance without a vote of the people. Therefore, if a modified zoning ordinance were included in the LCP, the LCP likely could not be fully certified without a public vote.

Thus the most feasible option for full certification is to utilize the proposed land use designations and keep the City's existing municipal code outside of the LCP context. In other words, projects proposed within the coastal zone would be subject to both LCP requirements for the issuance of CDPs and municipal code requirements for other local discretionary permit purposes, much the same way projects have been analyzed since the Coastal Act was passed (except that such projects were subject to Coastal Act Chapter 3 requirements, rather than LCP requirements since the City has no certified LCP yet). The City has previously analyzed projects for municipal code consistency when issuing local permits and the Commission has analyzed projects for Coastal Act and LUP consistency when issuing CDPs. The main difference moving forward is that the City would now be responsible for ensuring consistency when issuing both local permits and CDPs.

The only remaining issue is the adequacy of the implementing details in the IP with respect to CDP procedures and requirements. The IP as proposed is largely consistent with the procedures, requirements, and CDP exemptions detailed in the Coastal Act and its implementing regulations. Minor modifications to ensure full consistency with respect to CDP exemptions, required public notice, ensuring the Commission's Executive Director concurs with proposed de minimis CDP waivers, and clarifying the Commission's continued role in enforcing the requirements of LCP and Coastal Act are necessary. A suggested modification regarding the replacement of structures destroyed by natural disasters make clear that replacement of a structure *that does not conform to all LCP policies* is not exempt from CDP requirements. The suggested modification is necessary to ensure consistency with Coastal Act Section 30610 and Section 13252 of the Commission's regulations which state the same thing. The suggested modification does not state that replacement of such structures is prohibited (or that a CDP is required to replace a LCP conforming structure which is destroyed by a natural disaster), but simply states that a CDP is required, as is specified by the Coastal Act for such situations. See pages 123, 128-138 of **Exhibit 3** for the proposed modifications.

Because the proposed IP, as modified, mostly mirrors the proposed LUP update, it does not raise issues of consistency with the new LUP as amended. The additional standards included in the IP are intended to add detail and specificity that will guide implementation of the policies in the LUP, and will include the procedures for processing CDPs. In other words, the proposed IP, if modified as suggested, does not introduce any standards or requirements that are different and/or that did not emanate from the new LUP as amended. As such, the IP, if modified as suggested, is in conformance with and adequate to carry out the new LUP as amended.

M. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

CEQA Section 21080.5(d)(2)(A) prohibits a proposed LCP or LCP amendment from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the LCP or LCP amendment may have on the environment. Although local governments are *not* required to satisfy CEQA in terms of local preparation and adoption of LCPs and LCP amendments, many local governments use the CEQA process to develop information about proposed LCPs and LCP amendments, including to help facilitate Coastal Act review. In this case, the City, acting as lead CEQA agency, found the proposed LUP amendment and IP submittal to be statutorily exempt (under Public Resources Code 21080.5 for the development of a state agency required regulatory program)

The Coastal Commission is *not* exempt from satisfying CEQA requirements with respect to LCPs and LCP amendments, but the Commission's LCP/LCP amendment review, approval, and certification process has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal, including relating to coastal hazards, biological resources and environmentally sensitive habitat areas, water quality and marine resources, land uses and development standards, archeological and historic resources, visual and scenic resources, public services and circulation, and public access and recreation. All above findings are incorporated herein in their entirety by reference. The Commission concludes that approval of the proposed

LUP amendment and proposed IP with the modifications suggested is not expected to result in any significant adverse environmental effects, including as those terms are understood in CEQA. Thus, it is unnecessary for the Commission to suggest additional modifications (including through alternatives and/or mitigation measures) as there are no additional significant adverse environmental effects due to approval of the proposed LUP amendment and proposed IP as suggested to be modified that would necessitate such changes.

The Commission has included suggested modifications to the LUP Amendment and IP submittal that would ensure that they are each consistent with Coastal Act requirements. There are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the amendment would have on the environment within the meaning of CEQA. Thus, the proposed LUP amendment and IP submittal, if modified as suggested, will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS¹⁹

- *Final Background Report - Pacific Grove Local Coastal Program Update*, EMC Planning. January 12, 2015.
- *City of Pacific Grove Climate Change Vulnerability Assessment*, EMC Planning. January 12, 2015.

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- City of Pacific Grove
- National Oceanic and Atmospheric Administration - Monterey Bay Marine Sanctuary
- Bureau of Land Management – Central Coast Field Office
- California State Parks – Asilomar State Beach and Conference Grounds
- Ohlone/Costanoan-Esselen Nation
- Stanford University and Hopkins Marine Station
- Monterey Bay Aquarium
- Monterey Audubon Society
- Asilomar Dunes Neighborhood Association
- Hayward Lumber
- Cannery Row Company
- First Carbon Solutions
- Comstock Homes

¹⁹ These documents are available for review in the Commission’s Central Coast District office.