

**CALIFORNIA COASTAL COMMISSION**

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



# Th16c

**Prepared July 23, 2021 (for August 12, 2021 Hearing)**

**To:** Coastal Commissioners and Interested Persons

**From:** Dan Carl, Central Coast District Director  
Susan Craig, Central Coast District Manager  
Kevin Kahn, Central Coast District Supervisor

**Subject: City of Morro Bay Local Coastal Program Amendment Number  
LCP-3-MRB-21-0047-1 (City of Morro Bay LUP Update)**

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## SUMMARY OF STAFF RECOMMENDATION

The City of Morro Bay is proposing a complete update of its Local Coastal Program (LCP) Land Use Plan (LUP). This update was partially funded via three grants from the Coastal Commission's LCP Local Government Assistance Grant Program, and has been the subject of an extensive and inclusive community planning process, which commenced in earnest in 2015. The City's LUP was originally approved by the Commission in 1982, with several amendments since then. The current LCP, including the Implementation Plan (IP), was originally fully certified, with the City assuming coastal development permitting (CDP) authority, in 1984.

The City of Morro Bay and its over 10,000 residents are located within San Luis Obispo County between the unincorporated communities of Los Osos to the south and Cayucos to the north, and about halfway between San Francisco and Los Angeles on California's Central Coast. Almost the entire roughly six square mile City is located within the coastal zone, with only about 14 acres in the northern hill portion of the City out of the coastal zone. The City is bisected by Highway 1 paralleling the shoreline, and consists of a mixed-use Downtown area centered along Main Street and Morro Bay Boulevard leading to the Embarcadero. The Embarcadero is the City's primary tourist destination and also a working waterfront comprised of a mix of visitor-serving, public recreational access, and coastal-dependent development. Residential uses are dominant in the northern part of the City, as well as in and around the Downtown and Embarcadero areas. Just upcoast of the Embarcadero is the iconic Morro Rock and broad sandy beaches stretching to the northern City limit. Downcoast of the Embarcadero are coastal bluffs, low-lying marshes, and Morro Bay itself, which is a federally designated Estuary of National Significance. Morro Bay State Park and open agricultural hillsides surround the City's inland developed periphery, forming a scenic greenbelt around the more developed urban core.

Although the LCP has served the City well, like many of the first wave of LCPs that were certified in the early 1980s, the current LCP needs updating to reflect more modern understandings associated with contemporary coastal land use planning issues. This is particularly important in terms of policies addressing climate change (including coastal armoring and sea level rise, sustainable water use, and greenhouse gas emission reductions), affordable housing, and agricultural/open space preservation. Addressing these issues were some of the goals coming out of the City's initial public outreach starting in 2015. Since then, the City has undertaken an extensive public outreach and community planning process, including sending online and mailed surveys to residents citywide and holding 34 LUP Update Advisory Committee meetings, three community-wide public workshops, 31 topical stakeholder meetings, four joint Planning Commission/City Council meetings, 24 Planning Commission meetings, and 11 City Council meetings. This public process ultimately resulted in the City Council's adoption and submission of the updated LUP to the Coastal Commission in May 2021.

Throughout this local process, the City has also worked very closely with Commission staff on all aspects of the proposed LUP update. In fact, City and Commission staffs have worked collaboratively and iteratively on draft versions of the proposed LUP update and have consistently met and communicated prior to and throughout the City's public hearing process to understand issues, best practices, and needs, including in light of substantial and substantive public input. The result of this robust and inclusive process is a thorough and comprehensive proposed LUP that should result in enhanced coastal resource protection, and should serve the City well for many years to come.

Overall, the proposed updated LUP is centered around three primary goals: promoting walkable infill development, protecting surrounding agricultural/open space lands and natural resources, and ensuring the City is resilient to the effects of climate change. More specifically, and as discussed in detail in the subsequent analysis of this report, the LUP seeks to concentrate development to more fully enliven several already developed parts of town, including the Downtown and Embarcadero areas, with mixed-use ground floor retail and upper floor residential uses in the former, and a mix of visitor-serving and coastal-dependent uses in the latter. For the Embarcadero, the LUP incorporates the improvements and requirements the Commission has imposed on new development over the years,<sup>1</sup> including requiring the provision of a 10-foot lateral accessway on the bayside of new development, public coastal access signage/wayfinding, lower-cost accommodations, and ensuring piers/pilings and shoreline development are resilient to sea level rise and coastal hazards.

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<sup>1</sup> The Embarcadero area is located atop a historically filled public trust area and thus has always been located in the Commission's retained CDP jurisdiction area. Thus, all CDPs in this area for nearly 50 years have been Commission CDPs under the Coastal Act, with the LCP providing non-binding guidance since its certification in 1984. Over the years, the Commission has honed in on a fairly specific set of standards for development here, especially related to shoreline fronting development on Morro Bay, and the updated LUP carries these measures forward. Once the LCP is fully updated (i.e., when the IP too is updated to reflect the updated LUP), the intent is that the City would be able to apply to the Commission for a CDP jurisdictional change that would make the City the primary CDP authority in this area (subject to appeals to the Commission), with the updated LCP being the standard of review.

Two large sites in the City are ripe for redevelopment, namely the Vistra Energy site and the (soon-to-be) former wastewater treatment plant site, both of which are located on prime beach-adjacent lands upcoast from the Embarcadero area. There have been a number of conceptual development proposals for these sites in the past, and they are expected to continue to elicit similar proposals moving forward, especially given their large sizes and their location near the shoreline and the Embarcadero. The updated LUP identifies these sites for open space/recreation (the wastewater site) and mixed-use visitor-serving commercial and residential (the Vistra site), which makes sense given the way these sites have the potential to enliven this area and contribute to the City's overall attractiveness and vitality. At the same time, the updated LUP also recognizes that these sites are special, and thus the proposed updated LUP requires the preparation of a LUP amendment and a Master Plan prior to any development at these sites. This will allow the City to elicit community input and to identify the appropriate kinds and intensities of use based on an analysis of then present coastal resource constraints.

The proposed updated LUP also seeks to limit development at the periphery of the City's developed area, and in some ways represents a new vision regarding development in the boundaries between the more and less intensely development areas in the City. The large open agricultural hillsides that frame the City's inland boundary are generally intended to be preserved for those uses. The proposed update includes policies to better protect, manage, and restore environmentally sensitive habitat areas (ESHA), streams and riparian habitats, and wetlands, as well as parks and recreation areas. The proposed update also provides updated metrics regarding infrastructure capacities, improved policies regarding protecting public views, and a new environmental justice policy.

Finally, and perhaps most notably, the update includes significant policy direction regarding issues related to coastal hazards. It is focused almost exclusively on non-armoring alternatives, including to ensure that the City's beaches and shoreline recreational areas are resilient in the face of sea level rise. The proposed LUP contains a robust and progressive set of coastal hazards policies, including those requiring development to be safe from coastal hazards, including as exacerbated by sea level rise, without armoring; and only allowing armoring to serve coastal-dependent uses or to protect public beaches or development built before the Coastal Act and not redeveloped since. For all other uses, armoring is not allowed and must be removed (e.g., upon redevelopment). For otherwise allowable armoring, coastal resource impacts must be mitigated. The proposed LUP also contains commitments to future/continuous study of coastal hazards issues via the preparation of Shoreline Management Plans that can serve as more detailed prescriptions for discrete shoreline segments in the future. This policy construct should help to preserve and protect the City's sandy beaches and mostly unarmored coastal bluffs and low-lying marshes into the future.

Commission staff very much thanks the City and City staff for their commitment here to thoughtful long-range coastal planning and their open dialogue throughout the LUP update process. Staff also very much thanks the local community that has come out in force to articulate their preferred coastal planning approaches. Staff believes that the

result of this overall collaboration is a robust proposed LUP update that, as submitted, should serve to ably guide development and protect the City's coastal resources into the future. Thus, staff believes that the proposed LUP update is consistent with Coastal Act Chapter 3 policies, and that the Commission should **approve the LUP update as submitted** and without any modifications. This recommendation is borne from, and is the fruit of, the coordination process between the City, the public, and Commission staff. It is reflective of the success which results from collaboration and is a model to be emulated up and down the state in the coastal zone. The motion to implement staff's recommendation is found on **page 6** below.

**Staff Note: LCP Amendment Action Deadline**

The proposed LCP amendment was filed as complete on July 15, 2021. The proposed amendment affects only the LUP portion of the LCP and the 90-working-day action deadline is November 22, 2021. Thus, unless the Commission extends the action deadline (it may be extended by up to one year), the Commission has until November 22, 2021 to take a final action on this LCP amendment.

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**EXHIBITS**

- Exhibit 1 – Morro Bay Location Maps and Photos
- Exhibit 2 – Proposed LUP

## 1. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** the LUP amendment as submitted. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in certification of the LUP amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

***Motion:*** *I move that the Commission **certify** Land Use Plan Amendment LCP-3-MRB-21-0047-1 as submitted by the City of Morro Bay, and I recommend a **yes** vote.*

***Resolution:*** *The Commission hereby certifies Land Use Plan Amendment LCP-3-MRB-21-0047-1 as submitted by the City of Morro Bay and adopts the findings set forth below on the grounds that the Amendment conforms with the policies of Chapter 3 of the Coastal Act. Certification of Amendment 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 Amendment 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 that will result from certification of the Amendment.*

## 2. FINDINGS AND DECLARATIONS

### A. Background

The City of Morro Bay is an incorporated city of just over 10,000 residents that is located within the shoreline area of San Luis Obispo County between the unincorporated communities of Los Osos to the south and Cayucos to the north, and about halfway between San Francisco and Los Angeles on the California's Central Coast. Almost the entire roughly six square mile City is located within the coastal zone, with only about 14 acres in the northern hill portion of the City out of the coastal zone. The City is bisected by Highway 1 paralleling the shoreline, and consists of a mixed-use Downtown centered along Main Street and Morro Bay Boulevard leading to the Embarcadero. The Embarcadero is the City's primary tourist destination and also a working waterfront comprised of a mix of visitor-serving, public recreational access, and coastal-dependent development. Residential uses are dominant in the northern part of the City, as well as in and around the Downtown and Embarcadero areas. Just upcoast of the Embarcadero is the iconic Morro Rock, with broad sandy beaches stretching to the northern City limit. And downcoast of the Embarcadero are coastal bluffs, low-lying marshes, and Morro Bay itself, a federally designated Estuary of National Significance. Morro Bay State Park and open agricultural hillsides surround the City's inland developed periphery, forming a scenic greenbelt around the more developed urban core. See **Exhibit 1** for location maps and photos of the City of Morro Bay.

The City's Local Coastal Program (LCP) Land Use Plan (LUP) was originally certified by the Commission in 1982, and the LCP's Implementation Plan (IP) was subsequently certified in 1984, and thus the City assumed most CDP-issuing authority that year. Importantly, the Embarcadero area is located atop a public trust area that was filled in the 1940s, and therefore has always been located in the Commission's retained CDP jurisdiction area. Thus, all CDPs in this area for the last almost 50 years have been Commission CDPs under the Coastal Act, with the LCP providing non-binding guidance since its certification in 1984.

Although the LCP has served the City well, like many of the first wave of LCPs that were certified in the early 1980s, the current LCP is in need of updating to reflect more modern understandings associated with contemporary coastal land use planning issues. This is particularly important in terms of policies addressing climate change (including coastal armoring and sea level rise, sustainable water use, and greenhouse gas emission reductions), affordable housing, and agricultural/open space preservation. Addressing these issues were goals coming out of the City's initial public outreach process when the LUP update first began in earnest in 2015.<sup>2</sup>

Ultimately, the City here has undertaken an extensive public outreach and community engagement process for this LUP update. According to the City, community engagement started in 2015, at which point the City formed a General Plan Advisory Committee<sup>3</sup> (GPAC) consisting of a group of community members appointed by the City Council to provide input and guidance to City staff. The GPAC held monthly public meetings to discuss issues and solicit community input, eventually discussing LUP update issues at 34 public meetings in total. In addition to public meetings, public outreach also included both online and mailed surveys with over 500 respondents, phone-in surveys, water billing insert announcements, social media announcements, and website announcements. In addition, to target those in the City without computer access, the City also utilized a City Voice telephone survey with signs posted in key locations around the City encouraging feedback on Morro Bay's vision and values to inform LUP development and goals. The City also held three community-wide public workshops and 31 stakeholder meetings (organized by individuals who were interested in particular topics) to further discuss key issues and potential policy concepts. Multiple public meetings were also held by the Planning Commission and City Council during this early outreach and discussion time period, including four joint Planning Commission/City Council meetings, 18 Planning Commission meetings, and eight City Council meetings. This culminated in the release of the public review LUP draft in 2018, as well as a refined final adoption LUP draft in 2020. The Planning Commission held the first of six public hearings on the final adoption LUP draft in October 2020, ultimately making a series of refinements before approving a revised draft at its March 16, 2021 meeting, and sending it to the City Council for consideration. The City Council then held three public hearings beginning in April 2021, reviewing the document chapter by

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<sup>2</sup> The City also initiated a series of LCP update efforts in the early 2000s, none of which were ever brought to fruition.

<sup>3</sup> The LUP serves as a combined General Plan and Land Use Plan; hence the reference to the General Plan.

chapter, making more refinements, and ultimately in May 2021 adopting the now proposed LUP update before the Commission.

It is clear that the City has put forth considerable effort over the past six years to solicit public input and prepare and submit the proposed LUP update, including with substantial grant funding from the Commission through the LCP Local Assistance Grant Program.<sup>4</sup> City staff has worked closely with Commission staff on all aspects of the proposed LUP update throughout the entire process, including working together collaboratively and iteratively on draft versions of the proposed LUP update, and consistently meeting and communicating regarding issues and concerns, including those emanating from substantial and substantive public input, throughout the City's process. The result of this robust and inclusive process is a thorough and comprehensive proposed LUP intended to result in enhanced coastal resource protection for many years to come.

## **B. Proposed LCP Amendment**

Although the City's proposed LUP update is a complete overhaul that would replace the existing LUP, it is probably best understood as refining the existing LUP to better protect coastal resources and to better reflect the City's vision for its community. As stated in the proposed LUP's Community Vision statement (LUP Vision Chapter Page 2-6 in **Exhibit 2**), and as developed through the extensive public engagement process previously described, the vision for the City through implementation of the updated LUP for the next two decades is as follows:

*In 2040, Morro Bay remains a small oceanfront town and thriving year-round destination, known for its natural beauty, creative people, outdoor recreation, working waterfront, and welcoming community spirit. It is a friendly, safe, resilient, and healthy place where people of all ages and economic levels live, work, play, and visit.*

*The natural environment and wildlife are cherished and conserved and are essential elements that integrate with and define our urban landscape. Our healthy wetlands, iconic Morro Rock, and bustling harbor are complemented by expansive parks, connected bicycle lanes, safe streets, and pathways that are accessible to people of all ages and abilities.*

*We have a deep appreciation for nature and honor our native, cultural, and maritime heritage. We maintain and support our working waterfront and carefully preserve our estuary, watershed, natural shoreline, and surrounding open space.*

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<sup>4</sup> The Commission awarded the City \$147,000 in 2014 as part of the Round 2 Grants, \$200,000 in 2016 as part of the Round 3 Grants, and an additional \$65,000 in 2019 from the Round 6 Grants (a total of \$412,000 in Commission grants). This funding helped support not only the LUP update, but also the comprehensive update of the City's LCP overall, and specifically covering biological and sea level rise technical studies, policy development, outreach, coordination with Commission staff, and local adoption hearings.



*We adapt to changes in the climate, economy, and culture without compromising our small-town character.*

*Our vibrant economy is strengthened by sustainable resource practices, a responsive City government, and leading-edge technology that empowers local business owners and attracts new businesses and investors. We are a diverse, multigenerational community where head-of-household jobs, sustainable living wages, and affordable housing options serve as a foundation that allows people of all ages and income levels to thrive.*

*Modern, well-maintained public amenities and supportive community services nurture our residents, community organizations, and neighborhood groups. We actively participate in government decisions and take pride in volunteerism. We welcome personal expression and creativity, as reflected in our varied visitor attractions, bustling dining scene, vibrant arts culture, community events, public art, and outdoor activities. Our diverse housing, safe and eclectic neighborhoods, and reliable transit system are enhanced through suitable urban infill and mixed-use development that accommodates modest residential and commercial growth.*

*Mindful of our rich heritage, we take great pride in our community and work together toward a bright future.*

To implement this vision statement, the LUP update is centered around three primary goals: promoting walkable infill development, protecting surrounding agricultural/open space lands and natural resources, and ensuring the City is resilient to the effects of climate change. More specifically, and discussed in even greater detail in the subsequent analysis of this report, the LUP seeks to concentrate development to more fully enliven several already developed parts of town, including the downtown and Embarcadero areas, with mixed-use ground floor retail and upper floor residential uses in the former, and a mix of visitor-serving and coastal-dependent uses in the latter. For the Embarcadero, the LUP incorporates the improvements and requirements the Commission has imposed on new development over the years,<sup>5</sup> including requiring the provision of a 10-foot lateral accessway on the bayside of new development, public coastal access signage/wayfinding, lower-cost accommodations, and ensuring piers/pilings and shoreline development are resilient to sea level rise and coastal hazards.

There are two large opportunity sites in the City that are ripe for redevelopment, namely the Vistra Energy site and the (soon-to-be) former wastewater treatment plant site, both of which are located on prime beach-adjacent lands upcoast from the Embarcadero

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<sup>5</sup> As indicated above, the Embarcadero area is located in the Commission's CDP jurisdiction. Over the years, the Commission has honed in on a fairly specific set of standards for development here, especially related to shoreline fronting development on Morro Bay, and the updated LUP carries these measures forward. Once the LCP is fully updated (i.e., when the IP too is updated to reflect the updated LUP), the intent is that the City would be able to apply to the Commission for a CDP jurisdictional change that would make the City the primary CDP authority in this area (subject to appeals to the Commission), with the updated LCP being the standard of review.

area. There have been a number of conceptual development proposals for these sites in the past, and they are expected to continue to elicit similar proposals moving forward, especially given their large sizes and their location near the shoreline and the Embarcadero. The updated LUP identifies these sites for open space/recreation (the wastewater site) and mixed-use visitor-serving commercial and residential (the Vistra site), which makes sense given the way these sites have the potential to enliven this area and contribute to the City's overall attractiveness and vitality. At the same time, the updated LUP also recognizes that these sites are special, and thus the proposed updated LUP requires the preparation of a LUP amendment and a Master Plan prior to any development at these sites. This ensures that policymakers will continue to elicit community input and to identify the appropriate kinds and intensities of use based on an analysis of then present coastal resource constraints.

The update also seeks to limit development at the periphery of the City's developed area, and in some ways represents a new vision regarding development in the boundaries between the more and less intensely developed areas in the City. Specifically, the large open agricultural hillsides that frame the City's inland boundaries are generally intended to be preserved for those uses. The proposed update includes policies to better protect, manage, and restore environmentally sensitive habitat areas (ESHA), streams and riparian habitats, and wetlands, as well as parks and recreation areas. And, importantly, the update includes significant policy direction around the issues of coastal hazards, and is focused almost exclusively on non-armoring alternatives (including only allowing armoring to serve coastal-dependent uses or to protect public beaches or development built before January 1, 1977 that has not been redeveloped since that date), including to ensure that the City's beaches and shoreline recreational areas are resilient in the face of sea level rise. The proposed update also provides updated metrics regarding infrastructure capacities, improved policies regarding protecting public views, and a new environmental justice policy.

The proposed LUP update is comprised of eight elements/chapters, each of which covers a different coastal resource issue area (with some inherent overlap): 1) Land Use; 2) Community Design; 3) Circulation; 4) Conservation; 5) Open Space; 6) Public Safety; 7) Environmental Justice; and 8) a Glossary.<sup>6</sup> The proposed LUP also explicitly states that its provisions must be interpreted consistent with the Coastal Act, and explicitly incorporates the Coastal Act's provisions into the LUP by reference.<sup>7</sup> Each chapter includes extensive background information to help guide and interpret issues, as well as updated maps and other information and data. See **Exhibit 2** for the proposed updated LUP text, maps, and figures.

Ultimately, the City intends to update its IP following certification of the proposed LUP update. In the interim, the policies of the updated LUP, if certified by the Commission, would provide the primary standard of review for any proposed new development, and if

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<sup>6</sup> The City's document also includes chapters on Economic Development, Noise, Housing, and Implementation, but these chapters are part of the General Plan (because it is a combined General Plan/LUP) and are not part of the LUP.

<sup>7</sup> See Introduction Chapter on page 1-9 (see Exhibit 2).

there were to be any conflicts between the updated LUP and the existing IP (which can be expected to occur until the IP is also updated), the updated LUP would prevail.<sup>8</sup>

### **C. Standard of Review**

The standard of review for proposed LUP amendments is consistency with Coastal Act Chapter 3.

### **D. Land Use and Development**

#### ***Applicable Coastal Act Provisions***

The following sections of the Coastal Act guide the appropriate kinds, locations, and intensities of development and use, as well as necessary coastal resource protection standards. As a general rule, the Coastal Act seeks to promote infill development within existing developed communities with adequate public services and where such development will not cause adverse impacts to coastal resources. Applicable provisions include:

**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. (b) Where feasible, new hazardous industrial development shall be located away from existing developed areas. (c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.*

**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.*

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<sup>8</sup> Including as articulated in the Introduction Chapter on page 1-5 (see Exhibit 2).

Within these existing developed communities able to accommodate new development, the Coastal Act promotes certain developments over others, including public recreational access uses/facilities, visitor-serving uses (including lower-cost uses and accommodations), and coastal-dependent uses. Applicable provisions include:

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

**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.*

**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.*

**30255.** *Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.*

Further strengthening the Coastal Act's infill development goals, the Act includes strong policies protecting rural scenic lands, including in terms of limiting conversion of prime and nonprime agricultural land, requiring stable urban/rural boundaries, and protecting scenic views and minimizing alteration of natural landforms. Applicable provisions include:

**30241.** *The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following: (a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses. (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development. (c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250. (d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands. (e) By assuring that public service and facility expansions and nonagricultural development do not impair*

*agricultural viability, either through increased assessment costs or degraded air and water quality. (f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of prime agricultural lands.*

**30242.** *All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.*

**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.*

And in all cases, urban and rural, the Coastal Act protects natural resources and sensitive habitats. The following sections of the Coastal Act pertain to preservation and enhancement of marine resources, coastal waters, wetlands, and environmentally sensitive habitat areas (ESHAs):

**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.*

**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.*

**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.*

**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: (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities. (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps. (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 recreational opportunities. (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 these purposes to appropriate beaches or into suitable longshore 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. ...*

*(d) Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients that would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for these purposes are the method of placement, time of year of placement, and sensitivity of the placement area.*

**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 fishkills should be phased out or upgraded where feasible.*

**30236.** *Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

**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.*

## **1. Infill Development and Priority Land Uses**

### ***Analysis***

The Coastal Act establishes clear parameters and priorities for the location, intensity, type, and design of new development in the coastal zone as a means of protecting coastal zone resources and enhancing them where feasible. These parameters and priorities emanate from both specific Coastal Act policies and requirements, as well as the overlap and interplay between them. Fundamentally, Section 30250(a) requires that most new development be concentrated in and around existing developed areas with adequate public services and infrastructure to accommodate it. Within that broader framework, the Coastal Act also provides specific development prescriptions for specific resource types. For example, the Coastal Act provides that new development should be sited where it will not have an adverse impact on coastal resources, and where it will protect visual and scenic corridors, maintain public access to the coast, and minimize risks to life and property while ensuring structural integrity. In addition, the Coastal Act includes policies that require oceanfront and private land, as applicable, be protected for visitor-serving commercial uses and public recreation; that coastal-dependent development have priority over other types of development in areas along or near the shoreline; and requires development in the vicinity of sensitive habitats, such as wetlands and streams and other ESHA, to be sited appropriately to avoid impacts to such habitats.

The proposed LUP update identifies land use constraints and opportunities throughout the City, designates appropriate locations and densities of new development, and provides ways to assure that development will not have significant adverse effects, either individually or cumulatively, on coastal resources, consistent with the above-stated Coastal Act requirements. At a broad level, the proposed LUP's overall tenet is to prioritize infill development within the existing urban fabric of the City, to protect the surrounding greenbelt agricultural lands and hillsides that frame the City's inland edge,

and to protect open spaces and park lands. Specifically, the LUP includes extensive discussion about the intent of the LUP, which is to reflect existing development patterns in the City, maintain its small beach-town character, and promote economic, environmental, and social resiliency in the face of climate change.

To effectuate the proposed LUP's goals and visions, the LUP includes a series of general policies that apply throughout the coastal zone, as well as policies specific to individual neighborhoods. On the former, the LUP includes policies promoting and prioritizing walkable infill development rather than outward sprawl via Policies LU-1.1 (prioritizing infill development within the City's existing built environment), LU-1.2 (specifying that the protection of sensitive habitats, natural landforms, scenic resources, and other coastal resources are to be prioritized in all City decisions), LU-3.2 and CD-1.6 (requiring protection of the City's backdrop of undeveloped open hillsides, ridgelines, and agricultural lands), and LU-3.4 (identifying infill development on vacant or underutilized properties as the preferred growth strategy). The LUP also contains complementary policies addressing public works and services, including requiring all development to be served by adequate water, wastewater, and transportation capacity (see, for example, Policy CIR-2.1 that prioritizes compact mixed-use walkable development, and Policy C-7.4, that requires development to be served by a long-term sustainable public water supply and wastewater capacity). And in the areas where development is to be accommodated, the LUP also includes a series of policies that prioritize visitor-serving, recreational (including lower-cost recreation and public coastal access), and coastal-dependent development in accordance with Coastal Act requirements (e.g., see Policies LU-4.1, 4.5, 4.6, 5.3, and 6.1 through 12). See **Exhibit 2** for the text of these proposed policies.

These general policies are further augmented by the proposed LUP's more specific prescriptions for individual areas/neighborhoods. Specifically, the LUP's Community Design chapter divides the City into 10 "community character areas" and includes narrative descriptions of the goals and visions for development and conservation in each. For example, for the agricultural hillsides on the inland side of town, designated as the "Agriculture East of Highway 1" area, the narrative description states:

*It is important to the community to maintain these agricultural lands, including to protect their function as a natural buffer from urban development and framing the City's urban-rural boundary, and to protect public views.*

And conversely, for the Downtown area, the chapter promotes infill and walkable development with better connections to the Embarcadero waterfront:

*The vision for Downtown builds on elements of its existing character including walkability and a mix of uses where the ground-floor use engages with the street and residents and visitors, and parking can be consolidated behind buildings and/or in multi-story structures.... As noted for the Embarcadero, some vacant and underutilized sites in this area have been identified as areas for additional new amenities and facilities. In particular, the City envisions improvements to some of these sites that would provide greater connection between the*



*waterfront and Downtown, eliminating the “dead zone” at the top of Centennial Staircase and encouraging pedestrian traffic between the two areas.*

In addition to the Downtown area, the LUP identifies three other areas with the most opportunity for growth and development, namely the Embarcadero waterfront area, the Vistra Energy site, and the (soon-to-be) former wastewater treatment plant site. While one of the LUP’s goals is to maintain the small-town atmosphere by generally only providing for smaller-scale, limited development and the City is already predominantly built out, the LUP does identify these areas as generally appropriate for future redevelopment. For each of these three areas, the LUP includes a detailed background on their history and prescriptions for their future use.

In terms of the Embarcadero, this bustling waterfront commercial and visitor-serving area stretches roughly 1.5 miles from Coleman Park (immediately adjacent to the iconic Morro Rock) along the bayfront to Tidelands Park on its southern end, with the main developed Embarcadero spanning about half of that area (see **Exhibit 1**). Until the mid-1940s, most of then-unincorporated Morro Bay was built on the bluff tops above the Bay’s tidal flats. Between 1942 and 1945, the north and south breakwaters at the entrance to the Morro Bay harbor, two “T”-piers, and the inner harbor bulkhead were constructed for a Navy amphibious base. A navigational channel was dredged and the spoils deposited behind the inner harbor bulkhead to create a fill area along the Bay that became known as the Embarcadero. In the late 1940s, the Navy base, including all waterfront facilities, was transferred to San Luis Obispo County. Buildings began to be constructed on the Embarcadero, and various docks and piers were occupied by a growing fleet of commercial fishing boats. In 1964, the City of Morro Bay was incorporated and assumed jurisdiction over the County’s waterfront land and facilities, including the Embarcadero. Trusteeship of State tidelands was also transferred to the City at that time. Pursuant to the terms of the State tidelands’ grant, the underlying tidelands are only to be used for harbor development and for construction of facilities related to fisheries, commerce, and navigation, as well as for recreational uses, public parks, parking, roads, playgrounds, and businesses incidental to these uses. The City may lease said lands to business owners for the above stipulated purposes for periods of up to 50 years, though convenient access across said lands to the water and the absolute right to fish must always be reserved. The Embarcadero today is a major tourist attraction with a variety of visitor-serving uses (i.e., overnight units, restaurants, retail, etc.) and coastal-dependent and coastal-related land uses (i.e., kayak rentals, commercial and recreational fishing operations, etc.). Parcels on the bayside of the Embarcadero are located on State tidelands and are leased to individual lessees by the City in its capacity as Trustee.

As all development in this area is located in current or former tidelands, the Commission currently processes all CDP applications in this area. As such, the Commission has a long history planning and permitting a broad array of development along the Embarcadero, including development both in the water (e.g., docks, piers, and revetment repairs) and on the land (e.g., hotels, restaurants, and commercial fishing operations). Over the years, the Commission has supported a mix of both coastal-dependent and visitor-serving uses in this area, and has generally interpreted the

Coastal Act to require certain fairly specific things, including in terms of public access improvements (e.g., requiring a 10-foot wide lateral bayside accessway (known as the Harborwalk) around new or redeveloped structures so as to create one continuous bayside public pathway), lower-cost accommodations in new hotels (e.g., requiring 25 percent of new hotel rooms to be lower-cost), and ensuring new development minimizes coastal hazards risk (e.g., improving/elevating piers and related utilities, restacking the rock revetment that extends laterally along the seaward side of the Embarcadero, requiring tsunami preparedness plans, etc.).<sup>9</sup>

The proposed LUP carries forward and codifies these provisions directly into the LUP. First, the LUP includes broader policies protecting and prioritizing coastal-dependent and visitor-serving uses along the Embarcadero, including commercial fishing operations and public recreational access facilities (e.g., Policies LU-4.1 through 4.6). The LUP then includes specific prescriptions for development siting and design. For example, Policies LU-7.1 through LU-7.3 require a 10-foot-wide lateral public accessway free from obstruction along the Embarcadero waterfront with proper signage; Policy LU-7.7 requires the preparation of a Public Access Management Plan to identify public access operations and parameters; Policy LU-6.5 requires all new hotels and motels on state tidelands to provide lower-cost accommodations and publicly accessible facilities and amenities; and Policies LU-7.8, LU-8.7, and LU-8.13 address coastal hazards issues, including raising decks and underside utilities above flood zones,<sup>10</sup> relocating storm drains and outfalls, and mitigating any coastal resource impacts arising from shoreline armoring (see also the coastal hazards section of this report) and fill of coastal waters. See **Exhibit 2** for the text of these proposed policies.

The LUP also includes both narrative and policy descriptions for the broader public sphere in the Embarcadero area, including better connections to Downtown, making the Embarcadero into a more pedestrian-friendly public promenade, and consolidating public parking. The Community Design chapter states:

*Other changes to the character of this area include improvements and redesign of the Centennial Parkway and adjacent properties as part of the Market Plaza site on either side of Embarcadero. The plan for the Centennial Parkway calls for improvements to vehicle, bicycle, and pedestrian circulation including sidewalk widening and bike lanes. Embarcadero may become limited to one-way vehicle traffic between Beach and Marina streets. Other vacant and underutilized sites in this area, in particular parking lots, have been identified as areas for additional new amenities, businesses, and visitor-serving facilities. Further, the Embarcadero Road*

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<sup>9</sup> For example, within the past five years alone, the Commission has approved the following CDPs for development along the Embarcadero with such requirements: CDP 3-16-0287 (Front Street Cottages), CDP 3-17-0581 (Rose's Landing Embarcadero Hotel), CDP 3-18-0152-W (Gray's Inn), CDP 3-18-0297-W (Otter Rock Café and The Boatyard), CDP 3-18-0323-W (House of Ju Ju Restaurant), and CDP 3-19-0011 (Harborwalk Plaza Mixed-Use Hotel).

<sup>10</sup> Including to account for at least two feet of sea level rise, which is expected to adversely impact existing decks and piers in this area per the City's sea level rise vulnerability assessment.

*area along the waterfront could be improved with a wider pedestrian promenade and landscaping, and with consolidated parking on the inland side of the road.*

And these concepts are mirrored with actionable policies, including Policies LU-8.4, LU-8.5, and LU-8.14 (i.e., widening sidewalks, consolidating parking, and investigating the feasibility of a one-way or fully closed Embarcadero to allow a broad pedestrian plaza/promenade).

In sum, the LUP carries forward a series of provisions the Commission has imposed over the years for new development in this prime visitor-serving and working waterfront area—the face of Morro Bay’s coastal zone in many ways—and seeks to improve the Embarcadero’s public commons into an even more inviting and active destination.<sup>11</sup>

In terms of the Vistra and wastewater treatment plant sites, these sites are located just upcoast from the Embarcadero and the Downtown area (see **Exhibit 1**). The Vistra site is the location of a now-defunct 1950s-era power plant that ceased operation in 2014. The 107-acre site is now owned by the Vistra Energy Corporation and contains the former power plant’s buildings and related infrastructure (including the iconic three-tower smokestacks) and vacant lands. The Vistra site is also adjacent to a significant dune complex located to the west and Morro Creek to the north, as well as being in a highly visible part of town near Morro Rock and Morro Rock Beach.

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<sup>11</sup> It should be noted that some lessees in the Embarcadero area have indicated concern with the proposed policies, particularly that the Harborwalk and other improvements are expensive to build and onerous to maintain. Staff makes several observations in response. First, as described above, these are not new provisions but rather a codification of that which has already been required by both the City and the Commission for new development along the Embarcadero for some time. In other words, the LUP here is simply including policies that in practice have already been required. Second, the improvements here, particularly the lateral bayside Harborwalk, are extremely beneficial to both the broader public as well as users of the lessees’ proposed development (e.g., hotel guests, restaurant diners, etc.). The improvements form part of the unique charm and character of this area, and the Harborwalk, in particular, is an attraction that lures people to this coastal locale. Thus, the improvements benefit the lessees as well as the broader public. Third, the LUP describes the specific performance standards and goals regarding required improvements but provides flexibility in terms of how these improvements are carried out. Thus, the City could build certain Harborwalk segments itself, or multiple lessees could pool resources together on particular Harborwalk segments, or a combination of both approaches could be implemented. In other words, there is flexibility in how to accomplish the LUP’s requirements regarding Harborwalk and other improvements, as long as such improvements are actually implemented. And finally, unless and until the City’s complete LCP is updated (i.e., including certification of an updated IP) and the Commission approves a transfer of CDP authority as it applies to the filled portion of this area, the Commission will continue to exercise CDP jurisdiction over this area where the standard of review is the Coastal Act with the LCP providing non-binding guidance, and will continue to exercise such jurisdiction as regards development proposed in or over the Bay in all cases (i.e., CDP jurisdiction cannot be transferred to the City for the in/over water areas). Historically, the Commission has generally required compliance with certified LCPs in such cases, including as they can oftentimes provide more detailed prescriptions than the Coastal Act but are consistent with the Coastal Act because they are the result of the LCP certification process. However, it will be up to the Commission’s discretion in any particular case where it exercises its CDP authority with the Coastal Act as the standard of review, and it is not dependent on the City or the City’s LUP here.

The wastewater treatment plant site is located just upcoast and across Morro Creek from the Vistra site and is also located in a prime area along Atascadero Road (with easy access to Highways 1 and 41). This site also fronts the dunes at Morro Rock Beach. While this site currently houses the City's 1954-built wastewater treatment plant, the City is currently constructing a new wastewater treatment and reclamation facility just outside City limits. Once the new facility is operational, the City will decommission and demolish the existing wastewater treatment plant.<sup>12</sup>

Both sites constitute large pieces of coastal real estate located adjacent to Downtown and the Embarcadero that are ripe for potential redevelopment, and the LUP identifies both as areas where the most potential physical changes could occur in the entire City. As described in the proposed LUP's Community Design chapter:

*The character in this area is anticipated to change substantially by 2040 due to the expected redevelopment of the Vistra site. It is possible some of the existing power plant buildings may be reused. However, with or without building reuse, the site is expected to house some visitor-serving businesses or facilities and may also have office, retail, or housing. In the portions of the area that allow mixed-use development, zoning development standards will have heights sufficient to support the desired mix of uses. The allowed heights will also take into account potential sea level rise impacts. The stretch of the site along Embarcadero will engage and feel connected with uses across Embarcadero and upcoast and be inviting to pedestrians. The triangle parking lot portion of the site near the southern end of the character area is likely to become a boatyard and haul-out and house a maritime museum during the life of the plan, activating the area and directly connecting to the other harbor-related uses on the other side of Embarcadero. The character of the portion of the character area along the west end of Atascadero Road is envisioned to change once the existing wastewater treatment plant is relocated. In that case, redevelopment of much of the area where the plant is currently located could occur, creating an environment more focused on pedestrians, in particular visitors and those using the area for recreation. This area would likely include restaurants, retail, additional accommodations, sports fields, and other recreation activities taking advantage of the proximity and connection to the beach and views of Morro Rock.*

Thus, the proposed LUP envisions a mix of various potential uses at both sites, including visitor-serving and mixed-use development at the Vistra site and recreational uses at the wastewater treatment plant site. As such, the proposed LUP re-designates the wastewater treatment plant and Vistra sites to Open Space/Recreation and Visitor-Serving Commercial with a Mixed-Use Residential overlay, respectively (from General Industrial-Light and Coastal Dependent Industrial, respectively).<sup>13</sup> But in addition to their

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<sup>12</sup> Including as proposed by the City and codified by Special Condition 7 of CDP 3-19-0463, approved by the Commission in July 2019 and which authorized the construction and operation of the wastewater treatment and reclamation facility and associated improvements.

<sup>13</sup> The current IP zoning designations are Light Industrial for the wastewater treatment plant site and Coastal Dependent Industrial for the Vistra site. The City intends to update the IP in the future. However,

re-designation, given the size, scale, and overall importance these two sites have with respect to the City's future, as well as the coastal resource constraints on both sites that will help shape the appropriate types and intensities of future development (e.g., coastal hazards, ESHA setbacks, public view protections, etc.), the LUP also requires the preparation of a Master Plan<sup>14</sup> to be incorporated into the LUP as an LCP amendment (with the Coastal Act as the standard of review) prior to any development of these sites. Doing so will also elicit community input. The intent is to holistically plan for these large important coastal lands and to identify where and what types of uses and development are appropriate given potential coastal resource and other constraints, as well as to implement the City's larger LUP-identified visions for these sites. The Master Plan is required to evaluate and identify natural resources, coastal hazards, infrastructure, public coastal access, stormwater management, visual resources, cultural resources, neighborhood design, and any other development constraints consistent with the LUP's vision for each site. Regardless of the form of the Master Plan (e.g., a specific plan or a precise plan), it must be certified by the Commission as part of the LUP before a CDP application for any development on these two sites can be considered.<sup>15</sup> This Master Plan construct<sup>16</sup> is an appropriate way to comprehensively plan for and evaluate development on these large sites and will help ensure a robust public process and full identification and evaluation of coastal resource constraints to ultimately identify the appropriate kinds and intensities of use, consistent with the Coastal Act.

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until the IP is updated, there will be a conflict between the land use and zoning designations for these sites. In the case of any conflict between the updated LUP and the existing IP, the LUP prevails (see LUP Introduction page 1-5 in Exhibit 2).

<sup>14</sup> See LUP Policies LU-5.4 and LU-5.5 in Exhibit 2.

<sup>15</sup> It should be noted that Vistra Energy has submitted a CDP application to the City to develop a portion of the Vistra site. According to the materials provided so far, Vistra proposes to develop a large battery electric storage system (BESS) facility (consisting of thousands of batteries contained in three large warehouse-size buildings, with each building surrounded by associated power conversion and transmission equipment) on the former 22-acre fuel tank area within the 107-acre former power plant site. The proposed project would also include several smaller support buildings, eight electric transmission towers, elevated cables, and other infrastructure improvements. The BESS facility would use the former power plant's still-functional electricity transmission-distribution facility to access the state's electrical supply grid, whether to receive electricity generated elsewhere to charge its batteries or to supply stored electricity back into the grid.

Per the proposed LUP update, any such development at this site will be subject to the Master Plan/LUP amendment process, including to identify the coastal resource constraints and appropriate land uses at this site. The proposed project raises questions about consistency with the LUP's proposed land use designation and articulated vision for the site, including whether a change in use from at least partially visitor-serving commercial to industrial (i.e., from a higher priority to a lower priority use under the Coastal Act) is appropriate. Similar questions would arise in terms of complementary LUP provisions that emphasize open space and better connections with the Embarcadero, which the BESS facility would potentially preclude, along with other envisioned uses of the power plant site (including redevelopment of the actual power plant itself). All such issues would need to be addressed in the required Master Plan/LUP amendment prior to the City considering Vistra Energy's CDP application if the proposed LUP is certified.

<sup>16</sup> The Master Plan construct is very similar to the Planned Development concept for certain undeveloped parts of town recently certified as part of the City of Half Moon Bay's LUP update.

In conclusion, as proposed, the LUP is consistent with the policy requirements of the Coastal Act. The LUP's overarching vision of fostering walkable, mixed-use infill development within the existing urban fabric (and prioritizing visitor-serving, public recreational access, and coastal-dependent uses) while protecting surrounding agricultural and open space lands and natural resources more broadly is consistent with the Coastal Act's policies that similarly require same.

## 2. Natural Resources and Open Space

### **Analysis**

The Coastal Act provides protection for natural resources, including on and offshore marine resources, wetlands, ESHAs, and other coastal waters, streams, estuaries, and lakes. 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.

While Morro Bay is predominantly built out, there are large swaths of protected open space and natural habitat lands on the City's periphery but still within the City limits. This includes Morro Bay itself, which is a federally designated Estuary of National Significance, and Morro Bay State Park. As such, the proposed LUP includes a series of policies aimed at protecting these rich natural resources, including policies mirroring Coastal Act requirements to protect ESHA and coastal waters and wetlands, as well as open space and natural resources more broadly. With respect to ESHA, LUP Policy C-1.1 (see **Exhibit 2** for all LUP text and policies cited in this section) defines it consistent with Coastal Act Section 30107.5 (i.e., areas 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). This policy goes on to identify that: 1) aquatic resources and wetland habitats, 2) other sensitive natural communities, and 3) breeding and overwintering sites, all constitute ESHA, stating:

*Aquatic Resources and Wetland Habitats. These habitats include year-round and seasonal rivers and streams, wetlands (including fresh and saltwater marshes), and riparian vegetation, including willow woodland and scrub environments. Waterways where these resources are found include Chorro Creek, Morro Creek, Alva Paul Creek, and Toro Creek, in addition to several unnamed creeks. Several of these creeks and tributaries terminate in the Morro Bay estuary and drain directly into the Pacific Ocean. Riparian woodland and willow scrub areas and wetlands are generally present around these waterways. Each of these habitats is essential and provides benefits such as special habitats for endangered and rare species, improved water quality of downstream receiving waters, and groundwater recharge.*

*Other Sensitive Natural Communities. This category includes four types of non-wetland sensitive natural communities, including foredune, backdune/dune scrub, coastal bluff, and coastal strand environments. Eelgrass can occur in these*

*areas. They are all located directly on the coast of Morro Bay and run the extent of the city limits. These sensitive communities provide habitats for rare species and also directly impact water quality in the Pacific Ocean.*

*Breeding and Overwintering Sites. These habitats are located in small pockets throughout the coastal zone and include areas known as roosts, nests, and rookeries. They are important breeding and overwintering sites for such species as herons, egrets, cormorants, and peregrine falcons. The areas also include documented monarch butterfly overwintering roosts in groves throughout the coastal zone. These habitats must be preserved due to their importance to these rare species.*

Within these ESHA areas, Policy C-1.2 only allows uses dependent on the resources themselves (also called “resource-dependent uses”), such as habitat restoration, scientific research, and low-intensity public access and recreation (or uses allowed in wetlands and streams per Coastal Act Sections 30233 and 30236, respectively, for those habitat types). Further, this policy only allows such uses when they do not significantly disrupt habitat values. Together, Policies C-1.1 and C-1.2 generally mirror the two-pronged test for development in ESHA pursuant to Coastal Act Section 30240. To effectuate these requirements, including to identify the precise location of the habitat, siting and design techniques, and requisite buffers,<sup>17</sup> Policy C-1.3 requires biological site assessments based on the best available science and habitat mapping. For all other types of habitats that are not ESHA, the LUP seeks to protect them as well, including Policies C-1.13 (improving open space for local wildlife), C-1.14 (protecting natural resources that are not ESHA as much as feasible), as well several policies in the Open Space chapter (e.g., Policy OS-1.9 requires improvements to existing park and open space facilities, Policy OS-1.12 seeks to provide additional parks and open space areas, Policy OS-4.5 requires park areas to be built in a manner that protects natural resources and promotes sustainable open space, and Policy OS-5.3 requires the preservation of parks for their natural beauty and restoration of their resources).

In addition, a series of policies are included to protect water quality and marine resources both during and after construction, including regarding grading, sediment, and other disturbances. Policy OS-4.6 mirrors Coastal Act Section 30230 in terms of protecting marine resources, and Policies C-7.13 through C-7.23 require protection of marine resources and biological productivity, as well as the preservation of the Morro Bay Estuary.

In sum, the proposed LUP states the following as a primary goal for the City’s natural resources:

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<sup>17</sup> Policy C-1.5 requires buffers of at least 50 feet from streams/riparian areas, 100 feet from wetlands, and 50 feet from all other ESHA, with the only allowed uses within the buffer the same as uses allowed within the habitat itself. Buffer reductions to a minimum of 25 feet may be allowed subject to certain strict criteria and findings. Certain types of development that may otherwise be allowable within the habitat type, such as habitat fencing and trails, should still be located at least 10 feet away from the resource.

*These natural resources and environmentally sensitive habitat areas (ESHA) are a celebrated element of Morro Bay's economy and community character and offer opportunities for visitors and residents to participate in healthy activities. The City must prioritize these resources when planning for future development in order to ensure that development and growth continues to support and increase natural resource protections, as well as the community benefits they provide for local residents and the coastal access and recreation for visitors. At the same time, preserving the integrity of these resources requires the City to restore critical habitats, conserve energy and water, reduce air pollution and greenhouse gas emissions, and minimize waste.*

And the proposed LUP seeks to accomplish this goal with updated requirements to maintain and incorporate further protections for wetlands, streams and riparian corridors, and other sensitive habitat areas within the City, including with updated policies and maps establishing and defining habitat types, laying out policies protecting each habitat type, enumerating the limited permitted uses in these habitat areas and their buffers, and setting standards for siting and design for development permitted within and adjacent to them. In addition, the updated policies set required mitigation expectations for any LCP-allowed impacts and require monitoring and reporting for any required habitat mitigations. The proposed LUP update also lays out policies that set siting and design requirements to assure the water quality and biological productivity of coastal waters is protected, sets required water quality best management practices, and protects natural resource areas and open spaces (whether defined as ESHA or not) overall. As such, the protections, requirements, and performance standards laid out in the proposed policies generally mirror the Coastal Act requirements for protection of natural resources, including coastal waters, wetlands, and environmentally sensitive habitat areas and are thus consistent with the applicable Coastal Act policies.

## **E. Coastal Hazards**

### ***Applicable Coastal Act Provisions***

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 30235 identifies the criteria for when shoreline armoring might be allowable. These sections state in applicable part:

**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.*

**30253.** *New development shall do all of the following: (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (b) Assure stability*



*and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. ...*

### **Analysis**

Coastal Act Sections 30235 and 30253 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 uses, or to protect existing (not new or redeveloped) 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 or redeveloped non-coastal-dependent developments cannot rely on shoreline protective devices in their proposed siting and design, and instead must be located safe from coastal hazard threats 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, an updated LUP must, at a minimum, include the following: policies that require new 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 “existing” development that is considered as such because it was built prior to the Coastal Act’s effective date (i.e., January 1, 1977) and not redeveloped since;<sup>18</sup> and, for such development allowed shoreline protection, specify the requirements and mitigation measures needed to ensure resultant coastal resource impacts are mitigated, including with respect to impacts on sand supply, as well as public access and recreation, public views, beach ecology, and other coastal resources.

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<sup>18</sup> As described in the Commission’s 2015 Sea Level Rise Policy Guidance, the Commission interprets the term “existing structures” in Section 30235 as meaning structures that were in existence on January 1, 1977, the effective date of the Coastal Act. In other words, Section 30235’s directive to permit shoreline armoring for structures in certain circumstances applies to development that lawfully existed as of January 1, 1977 and that has not subsequently been redeveloped (i.e., where changes to it since 1977 have been sufficient enough that it is considered a replacement structure required to conform to applicable Coastal Act and LCP provisions). This interpretation is the most reasonable way to construe and harmonize Sections 30235 and 30253, which together evince a broad legislative intent to allow armoring for development that existed when the Coastal Act was passed, when such development is in danger from erosion, but to avoid such armoring for development constructed consistent with the Act, which does not allow shoreline altering armoring development to support same. This interpretation, which essentially “grandfathers” protection for development that predates the Coastal Act, is also supported by the Commission’s duty to protect public trust resources and interpret the Coastal Act in a liberal manner to accomplish its purposes.

In short, the Coastal Act requires new development to minimize risks to life and property while ensuring stability and structural integrity and without contributing significantly to erosion, geologic instability, or destruction of the site or surrounding area. It also provides that new development that would rely on shoreline armoring is prohibited and that adverse impacts of shoreline armoring to coastal resources, such as sand supply, be avoided, lessened, and mitigated for where unavoidable. As such, the Coastal Act requires that new development minimize risks to life and property in areas of coastal hazards and prohibits new development or redevelopment that would require armoring to ensure stability at any point during its lifetime.

The City's shoreline area development pattern can be divided into three distinct zones. The first is the coastal bluffs and beaches that flank the northern half of the City from the City limit downcoast to Morro Rock. This part of the shoreline is comprised of unarmored bluffs and wide sandy beaches that are part of Morro Strand State Beach. Just inland from the bluffs are residential neighborhoods and the Morro Strand State Beach campground, as well as several public beach parking lots and coastal access trails. The southern end of town includes marshes and the low-lying areas of Morro Bay proper, as well as Morro Bay State Park and its marina, golf course, campground, and other public facilities. But for the rock revetment that defines the edge of the marina and its boating piers, this portion of town is also unarmored. This southern area also does not provide any traditional sandy beach areas, but rather contains more traditional marsh features along the inland edge of the Bay. And in the middle of these two areas is the Embarcadero area, running roughly between Coleman Park on the upcoast end near Morro Rock and the Morro Bay harbor channel entrance to Tidelands Park and its public boat launch on the downcoast end. This urban waterfront area is lined by a rock revetment that also defines the bay edge (and has for decades),<sup>19</sup> and is lined with commercial fishing businesses, public and private boat docks and finger piers, public recreational access facilities (such as lateral and vertical coastal accessways), and visitor-serving uses (such as restaurants, shops, and hotels), all of which extend to and out over the bay itself. Given the dichotomy between this urban, armored waterfront area (hosting a mix of coastal-dependent and public recreational access infrastructure and uses) and the unarmored northern and southern portions of the City's shoreline (generally consisting of non-coastal-dependent residential uses), the LUP proposes a policy approach to reflect these unique shoreline attributes.

First, for the portions of the City outside of the Embarcadero waterfront (i.e., the predominantly unarmored northern beach and bluff area and the southern bluff and low-lying bay and marsh area), the LUP governs these areas via a series of policies specified in the Public Safety chapter. For these areas, the chapter's overarching objective, as specified in Goal PS-3 (see **Exhibit 2** for all LUP text and policies cited in this section), is to ensure:

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<sup>19</sup> As indicated earlier, a revetment was installed to help 'create' the Embarcadero area via fill inland of the Bay going back to the 1940s. As such, while artificial, it has essentially defined the edge of Morro Bay along the Embarcadero, with Bay waters extending directly to it without any sandy beaches.

*Morro Bay is prepared for and responsive to the effects of sea level rise and other coastal hazards in both the short- and longer-term future.*

To effectuate this goal, Policy PS-3.1 articulates the LUP's vision as one of preservation of the City's natural living shoreline as an irreplaceable resource. As such, this policy states that the LCP's intent is that shoreline protective devices,<sup>20</sup> and other shoreline altering development, are only allowed in very rare situations and when all coastal resource impacts are either avoided or appropriately and proportionately mitigated. The policy concludes by offering a roadmap of how the remaining coastal hazards policies implement this goal and vision. The proposed coastal hazards policies can be grouped into three categories: 1) policies that require new development to be safe from coastal hazards risk; 2) policies that specify which types of development and uses are and are not allowed shoreline armoring, and the coastal resource protection requirements that must be addressed as part of the project design/proposal for such allowable armoring to mitigate impacts; and 3) policies that require additional long-term planning and continuous study of coastal hazards issues affecting the City overall.

First, with respect to new development, the proposed Public Safety chapter includes a series of policies meant to maintain the existing unarmored character of the predominantly unarmored northern beach and bluff area and the southern bluff and low-lying bay and marsh areas, including to protect beaches and bluffs and the immense recreational and scenic utility they provide. The proposed policies require hazard avoidance and adaptation measures to protect coastal resources and development in the City (Policies PS-3.5 through PS-3.7). Broadly, these policies require new development to be sited and designed to avoid impacts from coastal hazards over the expected lifetime of the development in a manner that does not rely on shoreline protective devices (Policy PS-3.5), and requires findings based on the best available science and evidence via a required coastal hazards reports to ensure same (Policy PS-3.7). Should the development be located in an area that may be subject to coastal hazards, including as identified on LUP flooding/sea level rise maps, then Policy PS-3.6 requires: 1) an evaluation of those hazards risks and ways to address them; and 2) the recordation of a deed restriction acknowledging that the site is subject to coastal hazards risk, that armoring is prohibited as a mitigation measure to address such risk, and agreeing to remove/relocate the structure out of harm's way if necessary to abate such future hazards risk when certain triggers are met.<sup>21</sup>

Next, the LUP includes a series of policies describing shoreline protective devices, including when they are permissible and when not, and siting/design/mitigation

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<sup>20</sup> The LUP's Definitions chapter broadly defines "shoreline protective device" as "structures along the shoreline that are used to protect development against coastal hazards, including but not limited to seawalls, revetments, gunite, sheet piles, breakwaters, groins, bluff retention devices, retaining walls, and pier/caisson foundation and/or wall systems."

<sup>21</sup> Specifically, such removal/relocation is required if the City declares the development unsafe for occupancy and/or use, if the development requires armoring to protect it, if the development encroaches onto public trust lands, if access and utilities are no longer available to serve the development, or if removal/relocation is required by subsequent adaptation planning.

requirements for those that are permissible. Policies PS-3.2 and PS-3.3 state that both new<sup>22</sup> and existing<sup>23</sup> shoreline protective devices are only allowed under three circumstances when required to: 1) serve a coastal-dependent use; 2) protect an existing<sup>24</sup> structure; or 3) protect a public beach. In all cases, the use must be in danger from erosion<sup>25</sup> and there must not be any other feasible, less environmentally damaging alternative (such alternatives include removal/relocation of the structure away from hazards risk or nonstructural alternatives). Should any of these tests not be met (e.g., a previously permitted armoring structure is no longer needed to serve a coastal-dependent use, or the structure being protected is proposed for redevelopment), then the armoring is not allowed and must be removed as a condition of approval (Policy PS-3.5). And for otherwise permissible armoring, Policies PS-3.2 and PS-3.3 require all coastal resource impacts, including on public views and public recreational access, to be mitigated.

With respect to longer-term coastal hazards planning, the proposed LUP is intended to be a living and breathing document, both by requiring the best available science when making CDP determinations, but also in terms of additional study and policy analysis over time. Policy PS-3.4 calls for a broad goal to establish a shoreline management plan, to be initiated by the City, which would take a long-term, comprehensive approach to addressing changes to the shoreline from coastal processes, with an emphasis on soft protection strategies. As proposed, the LUP policies related to future planning requirements for development in hazardous areas with appropriate mitigation for impacts will ensure that future development minimizes risk and does not, in the long term, rely on shoreline protection, consistent with Coastal Act requirements regarding coastal hazards and the protection of beaches and natural areas along the shoreline.

And lastly, the proposed LUP includes a different policy construct for the Embarcadero area than what is described above, including to reflect the unique shoreline, development patterns, and composition of uses in this area. As previously described, this stretch of the City's coast is currently lined with a continuous rock revetment and bulkhead network that protects working waterfront uses, including coastal-dependent

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<sup>22</sup> Including replacement, augmentation, addition, and expansion associated with an existing device.

<sup>23</sup> Including restacking dislodged rock riprap in revetments within the approved revetment profile and texturing/contouring a vertical seawall per the approved surface treatment.

<sup>24</sup> Both policies specify that "existing structures" are those that were legally constructed prior to January 1, 1977 and that have not been redeveloped since then. The LUP's definitions section, in turn, defines "redevelopment" as follows: "A structure shall be considered redeveloped, whereby the structure is no longer considered an existing structure and instead the entire structure and all development on the site must be made to conform with all applicable LCP policies, when such development consists of: (1) Alteration (including interior and/or exterior remodeling and renovations, demolition or partial demolition, etc.) of 50% or more of the major structural components (including exterior walls, floor and roof structure, and foundation) of such development. (2) Additions and alterations to such development that lead to more than a 50% increase in floor area for the development. Changes to floor area and individual major structural components are measured cumulatively over time from January 1, 1977."

<sup>25</sup> Defined as being unsafe to use or occupy the particular use within two or three years due to coastal hazards risk/damage.

and coastal-related commercial fishing operations, kayak rentals and commercial/recreational boating slips, public piers, and lateral and vertical public coastal accessways. Interspersed in this area are also visitor-serving recreational uses such as hotels, public parking, and retail. Given that this urban waterfront area is already armored and such armoring supports coastal-dependent uses and other uses that would meet Coastal Act armoring tests, the proposed LUP governs coastal hazards along the Embarcadero and in other harbor/marina areas pursuant to Policies LU-8.7 through LU-13. Among other things, these policies require the minimum amount of fill and armoring as feasible, and mitigation for any coastal resource impacts.

In other words, instead of listing detailed policies for the Embarcadero area and other harbor/marina areas in the City regarding what types of uses and development are and are not allowed armoring, and the potential for removal of such armoring (as is the case for the rest of the City's shoreline pursuant to the above-described coastal hazards policies specified in the Public Safety chapter), the Embarcadero policies recognize that armoring in fact defines and has created the Embarcadero area, that this area is part of a bay and not part of the shoreline along the open ocean with sandy beach and/or potential sandy beach areas, and that this area provides for an integral mix of coastal-dependent facilities (including access to the water itself) that are allowed armoring. In other words, this area is decidedly different from the sandy beach and shoreline areas in the northern part of the City, and thus the policies applicable here recognize that, and focus on how best to continue to accommodate the Embarcadero's edge in a way that results in the least amount of impacts, where said impacts are also appropriately mitigated.<sup>26</sup> This is an important policy construct that reflects the Embarcadero's unique attributes, and that should serve to help guide important improvements in the Embarcadero and Marina areas, including to maintain their working waterfront status into the future.

In sum, as proposed, the LUP policies regarding the siting of new development generally mirror the language of Coastal Act Section 30253, including in that they assure adequate analysis, assessment, and siting to minimize risk from such hazards without reliance on shoreline armoring, and are therefore consistent with this policy.

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<sup>26</sup> Some members of the Embarcadero's lessee community have indicated concern with Policy LU-8.7's armoring mitigation requirements, including providing mitigation for identified coastal resource impacts over a 20-year time horizon and evaluating impacts again in subsequent 20-year increments. Their concern is that such timing conflicts with typical 50-year leases and the ability to attract investment given the timing disconnect. However, as stated, the policy simply mirrors the Commission's typical mitigation requirements for identifying, calculating, and mitigating any coastal resource impacts associated with shoreline armoring. The policy guides this exercise without establishing a rote mitigation requirement. In other words, if there are no, or minimal, impacts to such proposed armoring, including if the armoring is partially or entirely self-mitigating due to it protecting continued public recreational access facilities, for example, then no mitigation or only minimal mitigation would be required. In addition, it should be noted this policy is also largely advisory in nature since armoring projects in this location would be located within the Commission's retained CDP jurisdiction, with Coastal Act Chapter 3 as the standard of review and the LCP as guidance. And finally, the policy is geared towards larger-scale improvements to the Embarcadero's revetment/armoring network, whereas the projects the Commission has typically seen are smaller-scale repairs. As part of the IP, City and Commission staff can further identify for which types of projects the policy would typically apply.

And, as indicated above, 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 subject to erosion. The proposed LUP update mirrors these requirements, including that shoreline protective devices are allowed only to serve a coastal-dependent use or to protect an existing structure in imminent danger from erosion, and only when found to be the least environmentally damaging feasible alternative and when all coastal resource impacts are appropriately and proportionally mitigated. Policies in the proposed LUP update also require the use of "soft" and non-armoring shoreline protection where it is both required and feasible, and require monitoring and mitigation of the impacts of shoreline protective devices over time. When shoreline protective devices are no longer necessary, fall into disrepair, or are illegally constructed, the proposed LUP requires that such structures be removed. This approach in the proposed LUP update for shoreline protection device allowances is consistent with the allowances dictated by Coastal Act Sections 30235 and 30253.

Through these various policies, the LUP appropriately responds to the City's unique shoreline, including with policies that seek to retain and protect the City's unarmored bluffs and beaches, while appropriately providing for repairs and improvements to the City's working waterfront along the Embarcadero and its marina areas. This policy nuance is important and appropriate to help Morro Bay's shoreline flourish into the future, particularly in light of the uncertainties wrought by climate change and sea level rise. Importantly, these policy prescriptions place a strong emphasis on protecting the City's northern beaches, including protecting them against the effects of armoring in tandem with sea level rise that is known to 'squeeze' beaches and reduce their areal extent. Here, the City's primary objective is to allow natural processes in this sandy shoreline area to occur without the interference brought by armoring and other shoreline and landform altering development that might otherwise lead to a loss of such beaches and shoreline recreational areas. In other words, the City has prioritized the protection of the City's beaches as a critical LUP objective, recognizing their value to the City for habitat values and recreation, both for residents and visitors, and also the way in which they contribute to and help define the City's social fabric and identity.

In conclusion, the coastal hazards policies of the proposed LUP update are consistent with the Coastal Act, as they provide for community-led resiliency planning and relocation efforts to ensure protection of coastal resources as sea levels rise, limit shoreline armoring, and require robust studies for development proposed in hazardous areas accounting for projected sea level rise.

## **F. Other Coastal Resource Issues**

### ***Applicable Coastal Act Provisions***

The Coastal Act also requires the protection of other coastal resources, including public access and recreation, cultural resources, and public views, and it also addresses environmental justice considerations. The following sections of the Coastal Act require

preservation and enhancement of public access and recreational facilities and opportunities as follows:

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

**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.*

**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.*

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

**30213.** *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. The commission shall not: (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 or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.*

**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.*

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

**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.*

**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.*

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

**30224.** *Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching 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.*

**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 nonautomobile 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.*

**30253(e).** *Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.*

In terms of cultural resources, Section 30244 provides a means for ensuring mitigations are applied to protect such resources, stating:

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

And Section 30251 makes clear that coastal views are a critical resource, and requires that they be maintained and even enhanced, including via minimizing natural landform alteration and ensuring compatibility of new development with its surroundings. Section 30251 states:

**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.*

The Coastal Act also speaks to the need for appropriately considering and addressing environmental justice issues as follows:

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

**30107.3.** (a) “Environmental justice” means the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. (b) “Environmental justice” includes, but is not limited to, all of the following: (1) The availability of a healthy environment for all people. (2) The deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities. (3) Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision making process. (4) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.

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

### **Analysis**

The Coastal Act requires that public access and public recreational opportunities to and along the coast must be maximized, that development enhance and/or protect public access and recreation opportunities, and that access and recreational opportunities be provided where appropriate. Further, the Coastal Act states that public parking and other facilities should be distributed along the coast, and lower-cost visitor-serving facilities are to be protected, encouraged, and provided. The Coastal Act further provides that development shall provide appropriate mitigation if it may adversely impact archeological resources, and that the scenic and visual qualities of coastal areas are resources of public importance that must be protected and enhanced. Importantly, Coastal Act Section 30210’s direction to maximize access and recreational opportunities represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect: it is not enough to simply *provide* access to and along the coast, and not enough to simply *protect* access; rather such access must also be *maximized*. This terminology distinguishes the Coastal Act in certain respects and provides fundamental direction with respect to LCP public recreational access planning.

### **Public Access and Recreation**

The proposed LUP’s Open Space chapter specifically documents existing coastal access conditions and public recreational facilities, evaluates local and visitor demand for such facilities, describes improvements needed to enhance access to the coast for all people, and identifies priority park and open space improvements and the recreational needs of the community. The primary goal, as stated in Goal OS-1, is to ensure “The public has access to plentiful and well-maintained parks, beaches, and recreational activities throughout Morro Bay” and includes a series of policies to effectuate that goal, including policies promoting the California Coastal Trail (Policy OS-

1.3); ensuring that development does not interfere with public recreational access opportunities (Policy OS-1.4); maintaining and enhancing recreational opportunities and open spaces (Policies OS-1.5 through OS-1.10 and Policies OS-5.1 through OS-5.3), particularly protecting beaches and their habitat and recreational value (Policies OS-4.1 through 4.6); and specifically incorporating by reference the Coastal Act's public recreational access policies in Sections 30210 through 30224 (Policy OS-1.13). In addition, it also contains policies that require the provision of adequate parking for coastal access points (Policy CIR-4.5); require no-cost and lower-cost parking fees and parking in-lieu fees in certain circumstances (Policies CIR-4.1 through CIR-4.3); require amenities such as benches, bike racks, and clearly posted signage for public coastal accessways and trails (Policies OS-1.8 and LU-7.5), all of which are intended to protect and enhance public access (see **Exhibit 2** for these policies). Finally, the proposed LUP recognizes that Morro Bay is a prime visitor destination, and includes a series of policies designed to enhance the City for such visitors, including with respect to the upgrading the Embarcadero area for visitors (as described previously) and providing for lower cost overnight accommodations. On the latter, the LUP provides that existing lower-cost accommodations are to be protected (Policy LU-6.8) and new such accommodations provided/encouraged (Policies LU-6.1, 6.2, and 6.5). The LUP also seeks to provide other accommodations types such as short-term rentals (Policy LU-6.6) and camping (Policy 6.12).

Thus, the proposed coastal public access and recreation policies are consistent with Coastal Act Sections 30210, 30211, 30212, and 30252. They provide that maximum access and recreational opportunities shall be provided, and that development shall provide and enhance public access to the shoreline and along the coast, rather than interfere with it. The proposed LUP's policies are also consistent with Coastal Act Sections 30212.5 and 30213, which provide for the provision, distribution, and protection of public facilities including parking and lower-cost visitor and recreational facilities.

### **Cultural Resources and Environmental Justice**

The proposed LUP update also includes policies intended to ensure the protection and preservation of archaeological, tribal, and cultural resources in Morro Bay (see Policies OS-3.8 and EJ-2.7 in **Exhibit 2**). Policies require the protection of environmental justice concerns in conformance with the Commission's Environmental Justice Policy, as well as providing meaningful engagement on project development (Policies EJ-2.7 and EJ-2.8). In terms of cultural resources, the City undertook an extensive tribal consultation process in developing the LUP, and local tribes' suggestions and concerns were incorporated into the update's policies, including in terms of meaningful engagement on tribal issues as projects move through the development review process, as well as protection of tribal resources as much as possible (e.g., Policy C-2.3).<sup>27</sup> Thus, the

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<sup>27</sup> According to the City, tribal outreach included both SB18 and AB52 consultation with seven different tribes identified by the Native American Heritage Commission: Yak Tityu Tityu Yak Tilhini Tribe of indigenous Northern Chumash; Xolon-Salinan Tribe, Santa Ynez Band of Mission Indians; Salinan Tribe of Monterey-SLO Counties; Northern Chumash Tribal Council; Coastal Band of the Chumash; the Barbareno-Ventureno Band of Mission Indians, Santa Ynez Band of Chumash Indians; and Coastal Band of the Chumash Nation. The Yak Tityu Tityu Yak Tilhini Tribe of indigenous Northern Chumash, the

cultural resources policies of the proposed LUP update would be consistent with Coastal Act Section 30244, which requires identification of archaeological and paleontological resources and reasonable mitigation to protect such resources and address potential impacts.

Finally, although not a Chapter 3 policy, the Coastal Act also requires that environmental justice be considered in terms of all coastal resource areas, requires that coastal development does not unduly burden any particular segment of the population with adverse coastal resource impacts, especially those communities that historically have been overburdened by such impacts, and reflects a focus on explicitly requiring fair treatment to all people in the application of the Coastal Act and LCP. As such, this proposed LUP update includes a new foundational Environmental Justice chapter to ensure that Morro Bay's planning decisions are viewed through the lens of social equity and environmental justice, including incorporating by reference the Coastal Act environmental justice authorities in Section 30604(h) and the Commission's adopted Environmental Justice Policy (see Policy EJ-2.7). The Environmental Justice chapter provides support for numerous social equity considerations, including low-cost overnight accommodations, tribal consultation, low- and no-cost public access and recreation opportunities, and affordable housing. It also commits the City to effective engagement and outreach to maximize public participation in City decisions, including those who traditionally do not participate in such processes (Policy EJ-2.8). Thus, the proposed LUP update's incorporation of environmental justice considerations is consistent with Coastal Act Sections 30013, 30107.3, and 30604(h).

### **Public Views**

Finally, the proposed LUP update policies identify scenic and visual resource areas including scenic corridors, natural resources, and the built environment, and include requirements to protect such areas and public views more generally through review of new development proposals. Policies (see **Exhibit 2**) require development to minimize visual impacts, including by ensuring the enhancement of public views in all City actions and decisions (Policy C-9.1); protecting views to and along the ocean and minimizing the alteration of natural landforms (Policy C-9.2); and restoring visually degraded areas where feasible (Policy C-9.6), including through policies requiring the undergrounding of utilities, and ensuring that signage, wireless telecommunications facilities, landscaping, and other potentially visually obtrusive development is sited and designed to avoid such public view impacts (Policies C-9.9 through C-9.12). Thus, the proposed scenic and visual resource policies are consistent with Coastal Act Sections 30251 and 30253(e), which protect scenic and visual qualities of coastal areas including views to and along the ocean, the unique characteristics of popular visitor destination points and scenic coastal areas, compatibility with the character and natural landforms of the surrounding area, and public views of and in the coastal zone more broadly.

### **Conclusion**

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Xolon-Salinan Tribe, and the Northern Chumash Tribal Council responded to outreach requests, and identified the need for consultation during project development, as well as preservation of tribal resources as much as possible.

In conclusion, the proposed LUP update requires that public access to the coast is maintained, enhanced, and sustainable; ensures protection of cultural resources; enhances the protection of scenic and visual resources, and public views more broadly; and considers environmental justice implications of new development, and as such can be found consistent with the Coastal Act.

### **G. California Environmental Quality Act (CEQA)**

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of LCPs and LCP amendments. Instead, the CEQA responsibilities are assigned to the Coastal Commission; however, the Commission's LCP review and approval program has been found by the Secretary of the Natural Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP or LCP amendment action.

Nevertheless, the Commission is required, in approving an LCP or LCP amendment submittal, to find that the approval of the proposed LCP, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment (see California Code of Regulations Title 14 Sections 13540(f) and 13555(b)). In fulfilling that review, this report has discussed the relevant coastal resource issues with the proposed LCP update, and has concluded that approval is not expected to result in any significant environmental effects, including as those terms are understood in CEQA.

Thus, it is unnecessary for the Commission to suggest modifications (including through alternatives and/or mitigation measures) as there are no significant adverse environmental effects due to approval of the proposed LUP update that would necessitate such changes. Thus, the proposed LUP update will not result in any significant adverse environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A). In addition, the proposed LUP update includes all feasible measures to ensure that potentially significant environmental impacts of new development are minimized to the maximum extent feasible consistent with the requirements of the Coastal Act. These findings represent the Commission's analysis and consideration of all significant environmental issues raised in public comments received, including with regard to potential direct and cumulative impacts of the proposed LUP update, as well as potential alternatives to it.

### 3. APPENDICES

#### **A. Substantive File Documents<sup>28</sup>**

- Certified LCP
- City Planning Commission and City Council Resolutions
- City Planning Commission and City Council Hearing Staff Reports and Associated Documents
- City Planning Commission and City Council Minutes
- City Planning Commission and City Council Notices
- LCP Amendment Submittal LCP-3-MRB-21-0047-1

#### **B. Staff Contact with Agencies and Groups**

- City of Morro Bay
- Embarcadero Master Leaseholders, LLC

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<sup>28</sup> These documents are available for review from the Commission's Central Coast District office in Santa Cruz.