

# Exhibit E

This page intentionally left blank.

# MONTEREY COUNTY PLANNING COMMISSION

**May 27, 2020**  
**AGENDA ITEM NO. #5**



## Correspondence

---

### GPZ090005 – Moss Landing Community Plan Update

**FOR ADDITIONAL INFORMATION CONTACT:**

**Anna Quenga & Shelley Glennon**, Senior Planners

**Mike Novo**, Management Specialist

Monterey County Resource Management Agency

1441 Schilling Place, 2nd Floor South, Salinas CA, 93901

(831) 755-5175 or [QuengaAV@co.monterey.ca.us](mailto:QuengaAV@co.monterey.ca.us)

[GlennonS@co.monterey.ca.us](mailto:GlennonS@co.monterey.ca.us)

**From:** [Nancy Russell](#)  
**To:** [293-pchearingcomments](#)  
**Subject:** comment on #GPZ090005 Moss Landing Community Plan  
**Date:** Tuesday, May 26, 2020 1:56:26 PM

---

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe. ]

Attention: Planning Commission

Thank you for meeting to discuss the Moss Landing Community Plan. I am a resident of Moss Landing Heights. My house has been lived in and owned by members of my family for nearly 70 years. We have witnessed many changes over the years.

Many of the residents on Pieri Court and myself have attend countless planning meetings and workshops over the years. In years past the neighbors of Moss Landing Heights had no joint representation. The county often looked to the Chamber of Commerce as a representative of the residents. In fact, our issues were often not the same as the business community.

There are issues that the residents of Pieri Ct especially want to be sure are considered:

- The engineering plan for the underground wiring for Pieri Ct needs to be in the appendix. This plan is critical to ensure that eventually the wires on Pieri Ct will be put underground.
- The community plan needs to include language that says the staff will work with the community to secure funds to implement the Pieri Ct underground wiring.
- At one meeting we were assured that the sidewalk on the west side of Moss Landing Rd will be extended from the downtown past the cemetery all the way to Moss Landing Heights. A bike lane will also be part of that extension. Please be sure this is in an addendum to the plan.
- The speed of traffic is currently allowed to be 55MPH into Moss Landing. Traffic speed and entry and exit needs to be addressed.

Many of us on Pieri Ct agreed to these issues last year.

Thank you for considering these comments.

Nancy Russell  
10942 Pieri Ct  
831-818-6885

**From:** [Andrew DeVogelaere](#)  
**To:** [293-pchearingcomments](#); [Phillips, John M. x5022](#)  
**Subject:** Comment on Moss Landing Community Plan Update  
**Date:** Tuesday, May 26, 2020 12:37:43 PM

---

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe. ]

Dear Monterey County Planning Commission and County Supervisors,

Re: comments on the Moss Landing Community Plan Update

1) Add the engineering plans for burying the power lines on Pieri Court as an appendix to the plan.

The plans were completed almost a decade ago and cost a lot of money. Right before the project was about to start, the fund for this effort were reallocated to burying power lines around the rest of Moss Landing. We don't want these plans lost or forgotten. This was agreed to at a previous meeting at Moss Landing Marine Labs.

2) Add text to the plan that says that the County staff will work with Moss Landing residents to obtain funding for burying the power lines on Pieri Court.

Right now, all of the power lines in Moss Landing will be buried excepts on Pieri Court. Supervisor Calcagno arranged for a special mitigation project from the Moss Landing Power Plant to fund the Pieri Court piece. Somehow, these funds were diverted to the other Moss Landing mitigation projects. Of course, Pieri Court residents feel cheated and are angry, but we understand that, even as our funds are drawn from every year for another project, we are not going to have our lines buried in the near future. So, at a minimum, we would like the County to agree to work with us for grants and other mitigation funds (like for the new battery storage effort off of Dolan Road) to try and complete the Pieri Court project.

Thank you,

~ Andrew DeVogelaere  
P.O. Box 172  
Moss Landing, CA. 95039

Planning Commission Hearing May 27, 2020  
Agenda Item No. 5 - Moss Landing Community  
Plan Update

**From:** [Butler, Katie@Coastal](mailto:Butler.Katie@Coastal)  
**To:** [293-pchearingcomments](#); [Novo, Mike x5176](#); [Quenga, Anna V. x5175](#); [Glennon, Shelley x5173](#)  
**Cc:** [Kahn, Kevin@Coastal](mailto:Kahn, Kevin@Coastal); [Craig, Susan@Coastal](mailto:Craig, Susan@Coastal)  
**Subject:** Moss Landing Community Plan Update (May 27, 2020 PC agenda item #5)  
**Date:** Tuesday, May 26, 2020 2:36:40 PM  
**Attachments:** [pastedImagebase640.png](#)  
[Coastal Commission letter to MCO PC April 2020 MLCP Update Draft 5.26.2020.pdf](#)  
[Coastal Commission Coastal Hazards Edits April 2020 MLCP Update Draft 5.26.2020.docx](#)

---

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe. ]

Hello,

Please accept the attached letter and Word document with edits/comments from Coastal Commission staff on the April 2020 draft of the Moss Landing Community Plan update (scheduled for discussion tomorrow, May 27, 2020 at the Planning Commission).

Thank you,  
Katie Butler

---

Katie Butler  
Coastal Planner  
California Coastal Commission  
725 Front Street, Suite 300  
Santa Cruz, CA 95060  
(831) 427-4863  
[katie.butler@coastal.ca.gov](mailto:katie.butler@coastal.ca.gov)



**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060-4508  
VOICE (831) 427-4863  
FAX (831) 427-4877



May 26, 2020

Amy Roberts, Chair  
Monterey County Planning Commission  
168 W. Alisal Street  
Salinas, CA 93901

**Re: Moss Landing Community Plan Update (April 2020 Draft)**

Dear Chair Roberts,

Thank you for the opportunity to comment on the proposed April 2020 draft Moss Landing Community Plan update that is scheduled for discussion at the May 27<sup>th</sup> Monterey County Planning Commission hearing. We continue to be supportive of the County's efforts to update the Community Plan and have appreciated the opportunity to work with your staff on the update over the last several years.

We would like to observe that, overall, the document has been refined from previous drafts and, most importantly, includes policies related to coastal hazards and sea level rise that are critical to incorporate into the planning framework for Moss Landing given the known ongoing and expected risks to this area of your coastline (as described in the County's 2017 *Moss Landing Community Coastal Climate Change Vulnerability Report*). The Coastal Commission considers local coastal program (LCP) updates that address climate change and sea level rise hazards to be of the utmost importance, and we are pleased to have had the opportunity to both work with your staff and present to your Commission on this issue.

At this time, we would like to submit for your consideration the attached edits and comments on coastal hazards (proposed both in the Community Plan chapter as well as the overall North County Land Use Plan) only, with additional edits and comments on the remainder of the document forthcoming at a later date. These edits are for discussion purposes and are open to refinement, but we believe these policies and standards form a good basis for inclusion in the Community Plan because they are based on the Commission's recent experience with and actions on other jurisdictions' LCP updates as well as the Commission's statewide directives related to coastal hazards and sea level rise via the Commission's adopted Sea Level Rise Policy Guidance. They also respond to the unique shoreline in question here, one of dunes, a

Moss Landing Community Plan Update (April 2020 Draft)

working harbor/waterfront, and coastal-dependent research facilities. You will also note that we have included a new coastal hazards policy related to Highway 1, as we believe the future of Highway 1 through Moss Landing, in light of expected sea level rise, is an important consideration that must be put into policy at this time. Again, we welcome feedback from you and your staff on our proposed policy language and are available to discuss further.

We greatly appreciate the ongoing dialog with your staff on this update to the North County Land Use Plan, and look forward to continued collaboration to ultimately bring it to the Coastal Commission for certification.

Sincerely,

Katie Butler  
Coastal Planner  
Central Coast District Office



## 5.2.6 Hazards

This coastal community is subject to several hazards. Flooding, coastal erosion, ~~climate change effects~~, and tsunamis, all as potentially exacerbated by climate change-driven sea level rise, are the primary coastal hazard risks for the community. Other types of hazards, such as ~~Noise~~ from industrial uses, the fishing industry, harbor traffic, and Highway 1 can also be a public health concern.

### A. *Flooding*

The community is subject to flooding from both the ocean and from inland drainage areas. Much of the community is low-lying, particularly the downtown area and areas adjacent to the sloughs, harbor, and Old Salinas River. ~~A recent climate change study~~ The Moss Landing Community Coastal Climate Change Vulnerability Report (June 2017) projects increased risk in the future from both ocean effects (e.g., sea level rise, coastal storm flooding) and from increased flooding from inland watersheds.

The areas within Moss Landing that are subject to flooding are shown in **Figure ML-6**. According to the Federal Emergency Management Agency (FEMA), almost all of Moss Landing lies in the 100-year flood hazard zone. The exceptions include the Moss Landing Power Plant, much of the Moss Landing Business Park, and an area north of Potrero Road that includes residential property, the cemetery, and Moss Landing Marine Laboratories.

**Formatted:** Font: Italic

**Commented [KK1]:** Do you have a map that shows potential flooding from various sea level rise scenarios? That would be better to include here than Figure ML-6 since that one only deals with FEMA floods, which doesn't include SLR and future flood risks, only past risk.

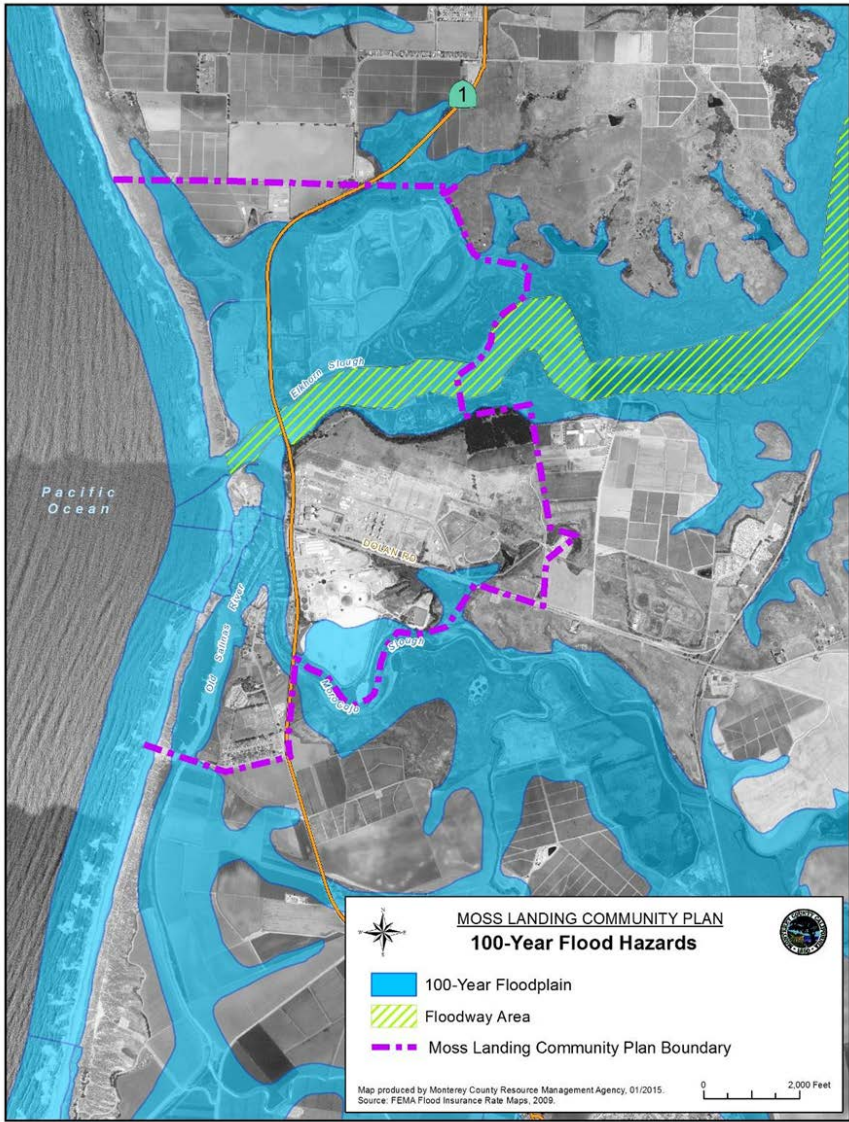


Figure ML-6. Flood Hazards Map

## B. Shoreline Erosion

Shoreline erosion issues related to land use are largely confined to the **Island**, which is the only developed portion of the community located directly on the ocean waterfront.

According to a 2007 study (Griggs) for MBARI, addressing the Island area, the historical position of the vegetation line on the Moss Landing spit is a useful indicator of long-term shoreline erosion patterns. For the purposes of the study, Griggs compiled a record of the vegetation line on the Moss Landing spit using aerial photographs taken over a 74-year period. Then using this record, the study established the “most severe erosion conditions” that were evident in the photographic history. Griggs mapped the extent of these conditions to establish a recommended setback line for new construction on the spit using Sandholdt Road as a reference point. Griggs summarized the conclusions of the vegetation line analysis as follows:

- The vegetation line on the spit (the position reached by maximum wave run-up) varied between 38 and 100 feet from mean high tide in the 74-year history of aerial photographs.
- The vegetation line varied depending on weather patterns, with the vegetation line moving seaward in the relatively calm La Niña period (i.e., 1965 to 1974) and moving landward in the stormier El Niño period (i.e., 1976 to 1984). Since 1998, when severe storms resulted in significant shoreline retreat, the vegetation line has generally advanced seaward.
- The distance between Sandholdt Road and the vegetation line is the narrowest on the southern portion of the spit where beach retreat has been arrested by the seawall constructed in this area.
- The shoreline has been gradually advancing at the sandy point in the vicinity of Perch Way and retreating slightly toward the northern end of the spit.

However, climate change effects will alter the rate and timing of coastal erosion, making the area potentially vulnerable to coastal hazard impacts.

## C. Climate Change

With the community lying between the Pacific Ocean and sloughs, and its low elevation, property within the community is vulnerable to the effects from climate change, including sea level rise, coastal storm flooding, rising tides, and fluvial (inland) flooding. Infrastructure within and around the community is also at risk from these effects.

According to the Intergovernmental Panel on Climate Change (IPCC) and the California Natural Resources Agency (CNRA), sea level has risen about seven inches over the last century due to global melting of land-based ice and thermal expansion. According to [the Moss Landing Community Coastal Climate Change Vulnerability Report \(June 2017\)](#), a report prepared for the

**Commented [KK2]:** Is this true? What about some of the back areas of the harbor near Highway 1?

And are there any maps that show potential erosion from various SLR scenarios?

**Commented [KB3]:** Given the increasingly changing and intensifying nature of climate change and sea level rise, the results of this 13-year old study may not still be germane. If you're going to keep it in, at least caveat this section to make that clear, and/or describe the related findings from the 2017 vulnerability report.

**Commented [MN4]:** is this right? Shelley to check original Griggs report.

~~County of Monterey in June 2017~~ more changes related to climate change can be expected by the year 2060 and on to the end of the century (2100):

- Average annual precipitation may show little change, but more intense wet and dry periods can be expected with more floods and more droughts.
- Flood peaks will become higher and natural spring/summer runoff will become lower.
- Sea levels in the Central Coast Region may rise by six to 28 inches by mid-century and 16 to 62 inches by the end of the century. (The estimated 62-inch rise in sea level corresponds to the high estimate for the year 2100).
- [The Coastal Commission's Sea Level Rise Policy Guidance and Ocean Protection Council's State Sea Level Rise Guidance both find that sea level rise is a threat to shoreline development and habitats, and offer guidance for sea level rise projections to use in planning and permitting decisions. These documents are incorporated by reference in this Community Plan.](#)

Rising sea levels in the Central Coast Region are likely to affect coastal recreation resources such as beaches, wharves, and campgrounds. Sea level rise is also expected to affect vulnerable populations along the coast through the immediate effects of flooding and temporary displacement and longer-term effects of permanent displacement and disruption of local tourism. Sea level rise also will affect the provision of basic services through disruption of linear infrastructure. Impacts to Highway 1 could affect regional transportation, access to Moss Landing, and access to tourism areas. Finally, communities that depend on groundwater basins within the coastal zone may be affected by increasing saltwater intrusion driven by sea level rise.

#### *D. Tsunami Risk*

The community area abuts Monterey Bay and the Pacific Ocean, so inundation from tsunami is possible. Tsunamis are typically triggered by earthquakes, local or distant, and can also be triggered by larger underwater landslides. A submarine landslide in the Monterey Canyon offshore of the community is considered capable of producing a significant tsunami on Monterey Bay. Large tsunamis can result in significant damage and loss of life.

On March 11, 2011, Moss Landing Harbor was damaged by a tsunami that caused approximately \$1.75 million in damages. According to Moss Landing Harbor District, the water surged and receded about seven feet in a matter of minutes, slamming the docks against the pilings in two directions resulting in almost 200 damaged pilings and 20,000 cubic yards of extra sediment in the harbor.

Large portions of the community are areas of potential tsunami wave movement. ~~According to State Planners, a wave height of up to three meters (9.8 feet) should be considered when planning shoreline structures in the Monterey Bay area.~~

E. Noise

Primary sources of noise for the community are the industrial areas and their land uses, harbor uses and infrastructure, waterfront industrial uses, and traffic along Highway 1.

F. Specific Policies - Erosion Hazard

- 1. ~~[2019 Policy 2.14] The County of Monterey supports structural armoring (i.e., bulkheading or rip rap) or other measures where necessary to prevent erosion, protect the Harbor shoreline and to incorporate where feasible public access into any armoring project.~~
- 2. ~~[Updated 1982 MLCP Policy 5.3.3.3] Bulkheading or other measures to prevent erosion and to maximize use of available shoreline should be provided along the west bank of the South Harbor.~~
- 3. ~~[Updated 1982 MLCP Policy 5.3.3.8] Retaining walls, bulkheads, or other appropriate erosion control measures should be developed along the eastern bank of the North Harbor as a means of preventing further erosion and improving berthing capacity.~~

Commented [KK5]: This is moved into the broader armoring policy below.

Commented [KK6]: These concepts are already incorporated in Policy 1 above.

G. Specific Policies - Coastal Climate Change Hazards

- 1. [ML-5.1] ~~To the maximum extent feasible, development shall be sited, designed, and constructed to avoid effects from coastal hazards, including flooding and erosion hazards as these may be exacerbated by sea level rise and climate change hazards over the anticipated life of the development in a manner that. Development shall assure its stability and structural integrity of the development without reliance on shoreline protective devices, substantial alteration to natural landforms along bluffs and cliffs, or otherwise harm coastal resources in a manner inconsistent with LCP policies or Coastal Act public access and recreation policies. The development shall also~~ not contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas. ~~Minor and/or ancillary development, including public trails, benches, gazebos, patios, raised decks and platforms and other similar uses, may be located seaward of a bluff or shoreline setback line provided that such development does not: 1) use a foundation that can better serve as a retaining or protection device or 2) require landform alterations.~~

Commented [KK7]: Climate change is not a discrete hazard, but rather is a force that exacerbates other coastal hazards like flooding and erosion.

Commented [KK8]: This is incorporated in the next paragraph.

~~If development cannot be located and designed in a manner that meets the state and local coastal hazard avoidance and minimization requirements over the full anticipated life of the development, the development may nevertheless be approved provided it meets all the following criteria:~~

Commented [k9]: All development needs to meet these requirements.

- a. The proposed development is the least environmentally damaging alternative that is sited and designed to avoid/minimize impacts to coastal resources and avoids/minimizes effects from coastal hazards to the extent feasible;

- b. The approval is subject to conditions requiring removal of the development and/or other adaptation measures when specific thresholds are met to ensure that the development does not: a) interfere with the continued existence of adjacent environmentally sensitive habitat areas or recreation areas, b) become incompatible with or substantially impair public trust resources, c) become structurally unstable, or d) pose increased risks to life and/or property or otherwise create a public nuisance;
- c. The proposed development is consistent with the public access and recreation policies of the Coastal Act and this LCP;
- d. A hazard assessment ~~must~~ demonstrates that the development appropriately minimizes risks to life and property and ensures structural stability for the life of the project; ~~and~~

— Minimize risks to life and property to the maximum extent feasible.

e. But for coastal-dependent development (e.g., piers/wharves serving Moss Landing Harbor, and certain coastal research facilities), public access and recreational facilities (e.g., Highway 1, public coastal trails and accessways), and existing structures (i.e., structures built before January 1, 1977 and not redeveloped since), the development does not propose or use any form of shoreline protection device/armoring, and conditions of approval shall be incorporated into the project that prohibits use of shoreline protective devices and waives any rights to its use.

**Commented [k10]:** Allows armoring for the Coastal Act consistent uses present in Moss Landing: coastal dependent uses, access/recreation uses, and harbor uses.

e.f. Otherwise mitigate for unavoidable impacts to coastal resources.

Development proposed in coastal hazard areas shall, as a condition of approval, record a deed restriction describing the hazard, the limitations of rights to protect the property from hazards, and describe restoration requirements.

- 2. [ML-5.2] Maintain the long-term viability of Moss Landing Harbor and coastal-dependent and coastal-related uses as long into the future as is economically feasible. The County of Monterey shall, in cooperation with the Harbor district and community and affected agencies, plan the appropriate steps to protect (dune restoration, beach replenishment, vegetation planting, armoring, etc.) or develop other types of adaptation strategies to protect these facilities against the effects of climate change hazards. Shoreline protective devices may be utilized when necessary to ensure the continued operation of the Harbor or to serve such coastal-dependent uses, when public access features are incorporated into the project (or provided off-site if on-site is infeasible), and where ~~For the rest of the community, shoreline protective devices and other shoreline altering development shall be allowed only when~~ all coastal resource impacts are avoided, or if unavoidable, are appropriately and proportionately mitigated.

xxx. Highway 1. The public access and recreation utility of Highway 1 shall be protected and provided in a manner that best protects coastal resources. Shoreline armoring may be allowed for segments of Highway 1 in conformance with applicable LCP shoreline protective device policies. In addition, the County shall develop, in coordination with Caltrans, the Coastal Commission, Moss Landing residents and businesses, and other interested stakeholders, a Shoreline Management Plan to identify long-term solutions and visions for this corridor. The plan shall identify ways to ensure the highway's long-term utility from coastal hazard impacts with the least amount of impact on agricultural land, wetlands, and Elkhorn Slough, with all impacts on these and other coastal resources appropriately and proportionally mitigated.

3. [ML-5.3] Monterey County shall, in cooperation with Elkhorn Slough Foundation, Elkhorn Slough National Estuarine Research Reserve, and other affected agencies and the community, plan the appropriate steps for managed retreat implementation to accommodate a migrating shoreline caused by sea level rise while promoting the conservation of beach, dune, slough, and other natural habitats. Such planning shall also include measures to ensure that increases in sediment load do not compromise harbor operations.
4. [ML-5.4] The County of Monterey shall work with the Moss Landing Harbor District and state and federal agencies to install and maintain a warning system, including adding nearby tide gauges, and signing for storm hazards and tsunami evacuation and education.
5. [New Policy 8] Shoreline Management Plan. The County shall prepare a Shoreline Management Plan. The plan shall function as a tool to help implement coastal protections, maximize public access, and protect coastal resources along the shoreline. The plan shall be prepared in coordination with relevant local, regional, and/or state agencies for the purpose of protecting coastal resources, as well as ensuring the resilience of coastal public infrastructure, and evaluate the following:
  - a. Refining adaptation triggers for actions to address coastal hazard impacts for different areas and assets in Moss Landing, including monitoring beaches for coastal hazard impacts such as erosion and changes in beach widths in order to identify trigger points for various adaptation strategies.
  - b. Site Reuse. Considering appropriate uses for sites previously occupied by relocated assets, including parks, open space/natural areas, and other predominantly passive land uses.
  - c. Transfer of Development Rights (TDR). Considering a TDR program to restrict development in areas that are vulnerable to coastal hazards and allow the transfer of development rights to parcels with less vulnerability to hazards.
  - d. Coastal Hazard Overlay Zone. Establishing a Coastal Hazard Overlay Zone to address safety from flood and sea level rise related hazards, and recommend



remedial actions. Establishing a program to inform owners of real estate in the Coastal Hazard Overlay Zone about coastal hazards or property vulnerabilities, including information about known current and potential future vulnerabilities to coastal hazards, and disclose permit conditions related to coastal hazards to prospective buyers prior to closing escrow.

The Shoreline Management Plan shall be adopted by the Coastal Commission through the Local Coastal Program amendment process and may be amended as appropriate.

*H. Specific Policies - Noise Hazard*

1. [New Noise Policy] Proposed development resulting in new noise levels shall incorporate site planning and design elements necessary to minimize noise impacts on surrounding land uses and reduce indoor noise to an acceptable level.
2. [ML-5.20] The County of Monterey shall require new residential development, including the demolition/rebuild of habitable structures but excluding remodels, within 400 feet of the centerline of Highway 1 to prepare an acoustical report containing design recommendations to maintain interior noise levels at 45 decibels (dBA) day-night average sound level (Ldn) or less.



## NORTH COUNTY LAND USE PLAN POLICY INSERTIONS

### Section 2.8.3: Insert the following new “Hazards” subsection:

#### *D. Coastal Hazards*

1. The County shall monitor the latest sea level rise and climate change information. The information gathered should address multiple time frame horizons (e.g., 2030, 2050, and 2100) as well as multiple sea level rise scenarios, as appropriate.
  - a. The County shall obtain the most current government issued floodplain/coastal hazards information that affects the most vulnerable areas of North County.
  - b. The County shall join or facilitate collaborative climate change adaptation efforts with local, regional, state, and federal entities to promote restoration or enhancement of natural ecosystems, such as coastal wetlands and sandy beaches.
2. Maintain the integrity and adaptability of essential public facilities that are vulnerable to ~~natural coastal~~ hazards. Locate new and redeveloped essential public facilities outside of ~~natural coastal~~ hazard areas to the maximum extent feasible. The County shall identify County owned infrastructure that could be compromised by coastal hazards. Replacement, ~~redevelopment~~construction, or relocation of public infrastructure shall be designed and constructed to avoid effects from coastal hazards for the planned life of the infrastructure to the maximum extent feasible. Needed infrastructure improvements or relocation shall be included in the County’s applicable Capital Improvement Program.
3. Where full adherence with all LCP policies, including setbacks and other hazard avoidance measures, preclude a reasonable economic use of the property as a whole, minimum economic use and/or development of the property shall be allowed necessary to avoid an unconstitutional taking of private property without just compensation.
4. Incorporate an emergency response plan addressing climate change hazards impacts within the Monterey County Office of Emergency Services’ Hazards Mitigation Plan in an effort to reduce loss of life and property by lessening/mitigating the impacts caused by climate change hazards.

### Section 2.4.2: Amend the “General Policies” Section to add the following:

- ~~1. 7.~~ Shoreline protective devices, including revetments, breakwaters, groins, 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 principal structures (i.e., structures built prior to January 1, 1977 and not redeveloped since that time) or public beaches in danger from erosion (i.e., when the structure would be unsafe for use/occupancy within two years), and when such device is sited and

**Commented [k11]:** These are policies from the recently adopted Pacific Grove LCP and reflect Commission best practices on armoring.

designed to eliminate or mitigate adverse impacts on local shoreline sand supply, and when there is no feasible, less environmentally damaging alternative. Any such structures shall be sited to avoid sensitive resources, if feasible, and adverse impacts on all coastal resources shall be mitigated. Alternatives considered under this alternative should include relocation of the threatened development, beach nourishment, non-structural drainage and native landscape improvements, or other similar non-structural options.

*New shoreline protective devices:*

New shoreline protective device development (including replacement, augmentation, addition and expansion associated with an existing device) shall only be utilized if no other feasible, less environmentally damaging alternative is available, such as relocation, beach nourishment, non-structural drainage and native landscape improvements, or other similar nonstructural options. Such non-structural options shall be used and prioritized wherever possible to protect coastal resources, including coastal habitats, public recreational uses, and public access to the coast. Where such non-structural options are not feasible in whole or in part, soft structural alternatives (e.g., sand bags, vegetation, etc.) shall be used and prioritized wherever possible before more significant shoreline protective devices (including, but not limited to, seawalls, revetments, breakwaters, groins, bluff retention devices, and piers/caisson foundation systems). All construction associated with shoreline protective devices and repair or maintenance or augmentation of existing protection devices shall be designed to eliminate or mitigate adverse impacts to coastal resources.

New shoreline protective devices shall be sited and designed to avoid coastal resource impacts to the maximum extent feasible, including through eliminating or mitigating all adverse impacts on local shoreline sand supply (including sand and beach area that are lost through the shoreline protective device's physical encroachment on a beach, fixing of the back beach, and prevention of new beach formation in areas where the bluff/shoreline would have otherwise naturally eroded, and the loss of sand-generating bluff/shoreline materials that would have entered the sand supply system absent the device); protecting and enhancing public recreational access; protecting and enhancing public views; minimizing alteration of, and be visually subordinate to, the natural character of the shoreline; avoiding impacts to archeological resources; and protecting other coastal resources as much as possible. Shoreline protective devices shall be required to mitigate impacts to shoreline sand supply, public access and recreation, and any other relevant coastal resource impacts in 20-year increments, starting with the building permit completion certification date. Permittees shall apply for a coastal permit amendment prior to expiration of each 20-year mitigation period, proposing mitigation for coastal resource impacts associated with retention of the shoreline protective device beyond the preceding 20-year mitigation period, and such application shall include consideration of alternative feasible mitigation measures in which the permittee can modify the shoreline protective device to lessen its impacts on coastal resources, including potential removal.

*Existing shoreline protective devices:*

Repair and maintenance of existing legally established shoreline protective devices (including restacking dislodged rock rip-rap in revetments within the approved revetment

Formatted: Font: 12 pt

profile and texturing/contouring a vertical seawall per the approved surface treatment, but not including replacement, augmentation, addition or expansion) shall only be allowed if the shoreline protective device is required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion. If it is not so required, then the shoreline protective device shall be removed and the affected area restored. Any such allowable repair and maintenance projects shall include measures to address and mitigate for any coastal resource impacts the device is having, including with respect to public views and public recreational access.

*All shoreline protective devices:*

When development is proposed, property owners with any structures that are associated with and/or protected by existing shoreline protective devices shall be required to provide an assessment of the continued efficacy of such devices, including an evaluation of whether the devices can be removed or modified (and affected areas restored to natural conditions) in light of the development proposed (e.g., if the development is being relocated inland) to better protect coastal resources, in terms of public recreational access resources, while still providing necessary coastal hazard protection. If the assessment indicates that they can be so removed or modified, including if the assessment indicates that there is greater coastal resource benefit to removal or modification of the shoreline protective device, then the removal or modification shall be required as a condition of any approval for the development. In all cases, shoreline protective devices shall only be authorized until the time when the qualifying development that is protected by such a device is no longer present, no longer requires armoring, or has been redeveloped.

**Section 4.3.5: Amend the “General Policies” Section to add the following:**

10. Development meeting the threshold of a replacement structure (i.e., “redevelopment”) shall be brought into conformance with all coastal resource protection policies.
11. Subdivisions and lot line adjustments shall not result in parcels where development would be located in areas vulnerable to coastal hazards except where the new lot(s) would be permanently protected for open space, public access, or other similar purposes consistent with the LCP.
12. Encourage property owners to reduce greenhouse gas emissions by using sustainable measures (e.g., weatherizing techniques and solar panels), when compatible with the community character, coastal viewsheds and the protection of coastal resources.

**Appendix B: Add the Following Glossary Terms:**

- 10.5 **Coastal Hazards:** An area that includes, but is not limited to, episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, coastal flooding, landslides, bluff and geologic instability, high liquefaction, and the interaction of same, and all as impacted by sea level rise.

69.5 **Shoreline Protective Devices:** 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.

Redevelopment. 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; or (3) additions and alterations to such development that costs 50% or more of the market value of the existing structure before construction. Changes to floor area and individual major structural components and the costs of such changes are measured cumulatively over time from January 1, 1977.

PAUL W. MONCRIEF  
L. PAUL HART  
DENNIS J. LEWIS  
KOREN R. MCWILLIAMS  
NEVIN P. MILLER  
LINDA N. SUNDE

# MONCRIEF & HART

A PROFESSIONAL CORPORATION

16 W. GABILAN STREET  
SALINAS, CALIFORNIA 93901  
PH: (831) 759-0900  
FX: (831) 759-0902  
MONCRIEFHART.COM

May 26, 2020

File No. 6377.022

## VIA EMAIL

Monterey County Planning Commission

**RE: Moss Landing Community Plan Update Public Workshop – GPZ090005; Moss Landing Business Park**

Dear Commissioners:

Thank you for your continued work on the draft Moss Landing Community Plan and the opportunity to comment on the proposed April 2020 draft Moss Landing Community Plan (the “Plan”) on behalf of our client Moss Landing Commercial/Business Park (“MLBP”). I write today in response to the presented draft Plan and to reiterate prior communications and to address new language relating to the same.

On page 24 of the Plan appears the following **draft Policy Section 3.3**:

### *F. Specific Policies*

1. [ML-3.3] The County of Monterey shall require all feasible traffic generation reduction measures of any new and/or expanded industrial use(s) and/or facility that would generate traffic on the segment of Highway 1 between Castroville and Salinas Road. ***Development in the heavy industrial areas shall not be allowed until needed improvements are made to the Dolan Road and Highway 1 intersection. (Emphasis added.)***

MLBP objects to the last sentence of draft Policy Section 3.3 as it could prevent any development on the MLBP property into the unforeseeable future. As indicated in our letter dated 02/12/19 (attached hereto as **Exhibit A**) the definition of the term “development” is extremely broad. As such, its use in the last sentence of draft Policy 3.3 in conjunction with requiring “needed improvements” to be made to the Dolan Road and Highway 1 intersection could effectively tie the hands of the property owner and unduly burden and restrict the development of the property. There is no guidance or certainty in the language “needed improvements” which could be open to subjective interpretation and thus any “development” – however small – would require completion of “needed improvements” and require completed action by third parties such as CalTrans, completely outside the control of the property owner. Disagreement of what are “needed improvements” and/or refusal of third parties to make “needed improvements” to the indicated areas could prevent any development of the MLBP property.

On page 31-33 of the Plan are the following **Section 5.4.3** and **Subsection B.3**, which appear to misconstrue the requirement of coastal dependent/coastal related uses as opposed to priority of developments.

### *5.4.3 Industrial*



The Moss Landing Community Plan establishes two designations for industrial uses: Waterfront Industry and Coastal Heavy Industry. *The industries located in Moss Landing are generally dependent for their existence upon a location near the coastline, and as such are considered "coastal dependent"*. These industries include commercial fishing, aquaculture, energy facilities and manufacturing activities and are located within the Island Neighborhood, properties east of Highway 1, and a stretch of land between the south harbor and west of Highway 1. *Coastal dependent industries are given priority by the Coastal Act (CA §30255) over other land uses on or near the coast*. The intent of this plan is to encourage coastal dependent industrial facilities to expand within the existing sites, and be allowed reasonable growth consistent with the protection of the area's natural resources. Impacts to sensitive natural habitats that cannot be avoided by the future expansion of these facilities must be mitigated to less than significant to the maximum extent feasible. *(Emphasis added.)*

.....

#### *B. Coastal Heavy Industry ...*

##### *3. Moss Landing Business Park*

The Moss Landing Business Park is located south of Dolan Road, east of Highway 1 on approximately 182.6 acres and includes a narrow stretch of land approximately 7.7 acres located between the South Harbor and the west side of Highway 1. Historically the business park site east of Highway 1 was used for manufacturing purposes, specifically for the production of magnesia and refractory brick by using *nearby resources including seawater from the ocean and dolomite from the Natividad Quarry*. Today the business park property located east of Highway 1 near Dolan Road is being used for industrial offices, industrial shops, storage, and commercial cannabis activities. (see "The Moss Landing Business Park Special Treatment Area" narrative in Section 5.4.8.B below and Policies 5.4.9.H.1 and 2). *(Emphasis added.)*

Section 30255 of the Coastal Act indicates that Coastal-dependent developments shall have priority over other developments *on or near* the shoreline. However, to be "coastal-dependent" use the property must be "*on or adjacent to the sea.*" (Coastal Implementation Plan section 20.144.020.P).

By letter dated 09/11/19 (see attached **Exhibit B**) we pointed out that to be "coastal dependent", the property must be located *on or adjacent to the sea* - not merely "*near the coastline*" to be coastal dependent. None of MLBP parcels east of Highway 1 are on or adjacent to the sea. A further example of the inappropriateness of the use of the word "*near*" to define the coastal dependent/coastal related requirements is in Subsection B.3. on pages 32-33 of the Plan where Staff uses the word "nearby" to refer to resources being historically used by the MLBP property and lump together "*including seawater from the ocean and dolomite from the Natividad Quarry*". Natividad Quarry is located miles from the MLBP property. The term "near" is not synonymous with "on or adjacent to" as applied to the requirements of "coastal dependent/ coastal related" use.

Further, Staff acknowledged such definition of coastal dependent/coastal related use and the limitation such application of terms to the MLBP property creates in its Discussion to the 9/11/19 Planning Commission meeting Agenda:



“Coastal Dependent use is defined as “development or land use which requires a site on or adjacent to the sea in order to be able to function at all” (Coastal Implementation Plan section 20.144.020.P). This definition is extremely limiting. Coastal-Related Development is defined as “any use or development that is dependent on a coastal dependent development or use” (Coastal Implementation Plan section 20.144.020.R). Due to the practical difficulty in allowing coastal dependent uses on the majority of the Business Park site, coastal-related uses are likewise difficult to allow. If the developed portion of the site had direct access to the water, recommending the site remain limited to Coastal Dependent and Coastal-Related uses would make sense. However, without access to the water for the majority of the Business Park, the definition of Coastal Dependent makes the use of the site unlikely.”

MLBP continues to assert that uses of the property other than coastal dependent/coastal related must be allowed.

On page 37 of the Plan appears the following **Section 5.4.8** providing for Special Treatment Area Overlays. This section is not clear and could be misconstrued to unduly restrict development of, and imposes additional General Development Plan (“GDP”) requirements on, the MLBP property.

#### ***5.4.8 Special Treatment Area Overlays***

The "Special Treatment" designation is intended to facilitate a comprehensive planned approach towards developing specifically designated areas intended for intense levels of development or that require special consideration due to their proximity to unique or valuable resources. There are three (3) special treatment area overlays in Moss Landing including: The Island, North Potrero and Moss Landing Business Park.

.....

#### ***B. Moss Landing Business Park Special Treatment Area***

The Moss Landing Business Park Special Treatment Area covers the Moss Landing Business Park Property located south of Dolan Road, east of Highway 1, on approximately 182.6 acres and includes a narrow stretch of approximately 7.7 acres of land located between the South Harbor and the west side of Highway 1. ***The intent of this overlay is to establish the parameters for development of the Moss Landing Business Park, including restricting the development intensity of the site. Development of the site requires the approval of a comprehensive General Development Plan that describes proposed circulation improvements and their location, categories of proposed land uses and their location, and an estimate of potential development intensity for each proposed use. The General Development Plan should address the coastal dependent/related/priority nature of proposed uses (including the use of seawater in industrial operations), potential land use conflicts between different categories of use, and the protection of unique natural resources on and around the site.***

The use of the phrase “including restricting the development intensity” does not provide sufficient clarity as to the intent of the Special Treatment Overlay and appears to further restrict the use of the MLBP property. As indicated in letter dated 2/12/19 (attached hereto as **Exhibit A**) and letter dated 7/10/19



(attached hereto as **Exhibit C**), the special treatment zoning designation is intended to provide flexibility as to the types of uses allowed on the MLBP property, as opposed to mandating only Heavy Industrial types of uses, with the effect of allowing MLBP to use the property in less intensive and more environmentally friendly ways than that of Heavy Industrial uses. Accordingly, the language in Section 5.4.8.B should be revised to reflect the flexibility allowed by the Special Treatment designation of other uses.

Further, it is not clear why only the MLBP Special Treatment Area contains a listing of items to be included in its GDP. The other Special Treatment Areas do not include such requirements. The requirements for a GDP should be consistently applied.

On page 40-41 of the Plan in Subsection 5.4.9.H.1 appears the following **draft Policy Section 2.10**:

***H. Specific Policies – Moss Landing Business Park Special Treatment Overlay***

1. [ML-2.10] Total structural development in the Moss Landing Business Park Special Treatment Area shall be limited to 2,000,000 square feet of floor area of structure(s) or 36,000 gpd wastewater, whichever is more restrictive. Above ground seawater tanks are not included in the square footage limitation.

As indicated in prior letter to the Planning Commission dated 9/11/19 (attached hereto as **Exhibit B**) and letter dated 7/10/19 (attached hereto as **Exhibit C**), MLBP objected to restriction of square footage not being limited to that which is “habitable”. Accordingly, the square footage restriction should be revised to apply only as to ...“floor area of habitable structure(s)... and...”Above ground seawater tanks and other non-habitable structures are not included in the square footage limitation.”

Also, Staff revised its previous draft Policy 2.10 to now include the words “*Special Treatment Area*” qualifying “the Moss Landing Business Park.” As indicated above, Staff’s language in this draft Plan appears to now indicate that Staff intends a Special Treatment Area for the MLBP to be “restrictive” as opposed to allowing for more flexibility of uses other than Heavy Industrial zoned property. Such Special Treatment Area information should be revised to include the greater flexibility in uses intended.

On page 41 of the draft Plan, Staff includes the below referenced **draft “NEW1” policy**. This new policy was not presented in a ML workshop but presented for the first time in agenda packet for the 09/11/19 meeting. Our letter was presented to Planning Commission objecting to the policy for the 9/11/19 meeting and by letter dated 09/25/19 we requested that letter be presented to the Planning Commission for review for the continued 09/11/19 planning commission meeting (see attached **Exhibit B**). At the 09/25/19 meeting, this new draft policy was not addressed, rather, by motion of the Planning Commission the Staff was requested to return with a draft Community Plan for review. As such, and as the draft Community Plan includes this new draft policy, we are re-presenting our enclosed letters. MLBP objects to this new policy as it would severely and unreasonably restrict the use of the MLBP property, would restrict use to coastal-dependent and coastal-related in an area that does not meet the requirement of being on or adjacent to the sea, and would render the property unable to be developed or developed only pursuant to extreme limitations that are not applied to other property owners.





2. [2019 ML-NEW1] Development within the Moss Landing Business Park Special Treatment Area shall be subject to the following:

a. Uses are limited to coastal-dependent uses, coastal-related industrial uses, and the following coastal priority uses: Natural Resource Preservation and Protection, and Agricultural Uses (including research, commercial cannabis activity and aquaculture).

b. Residential (other than caretakers' units) and Commercial development is not allowed.

c. Direct motor vehicular access to the area located west of Highway 1 is not allowed from Highway 1 or Moss Landing Road.

d. Approval of a comprehensive General Development Plan that analyzes the following:

i. Proposed circulation improvements and their location;

ii. Categories of proposed land uses and their location;

iii. An approximation of the proposed potential development intensity for each proposed use;

iv. The coastal dependent/related/priority nature of proposed uses (including the use of seawater); and

v. Potential land use conflicts between different categories of use, and the protection of unique natural resources on and around the site.

e. Development of industrial operations that can reuse waste heat or other effluent streams from industrial facilities within the Moss Landing Community, or that utilize coastal resources, as part of their processes is encouraged.

MLBP reserves the right to respond on matters provided in communications on the Moss Landing Community Plan Update matter. Thank you for your consideration of these matters and the opportunity to comment.

Yours truly,

**MONCRIEF & HART, PC**

A handwritten signature in black ink, appearing to read 'K R McWilliams'. The signature is fluid and cursive, written over a white background.

Koren R. McWilliams  
Attorneys for MLBP

KRM/sld

Enclosures

# **EXHIBIT A**

PAUL W. MONCRIEF  
L. PAUL HART  
DENNIS J. LEWIS  
KOREN R. MCWILLIAMS  
LINDA N. SUNDE

**MONCRIEF & HART**  
A PROFESSIONAL CORPORATION

16 W. GABILAN STREET  
SALINAS, CALIFORNIA 93901  
PH: (831) 759-0900  
FX: (831) 759-0902  
*MoncriefHart.com*

February 12, 2019

File No. 6377.022

**VIA HAND DELIVERY**

Monterey County Planning Commission

**Re: Moss Landing Community Plan – Transportation Issues Workshop 02.13.19  
Moss Landing Business Park**

Dear Commissioners:

Thank you for your continued work on the draft Moss Landing Community Plan and the opportunity to comment on the proposed plan, on behalf of our client Moss Landing Commercial/Business Park (MLBP).

I write today to address the following issues:

1. Specific Traffic Issues / Policies being evaluated/considered – including ML -3.3 **and**
2. “Special Treatment Area” vs. “Coastal Heavy Industrial” Zoning Designation for MLBP

**I. SPECIFIC TRAFFIC RELATED POLICIES**

**A. Policy ML – 3.3 - Traffic Generation Reduction Measures**

**Purpose & Intent:** To ensure that all feasible traffic generation reduction measures be implemented to mitigate any [intensified] traffic demands associated with expanded industrial facilities

**MLBP Proposed Language:** Recommends adopting 2017 Version of language in the left column, with following minor modification:

“...that would generate [significantly increased peak hour] freight and employee traffic...”

1. Overview of Problems with Proposed Staff & Community Changes to ML- 3.3
  - a. Use of term “Development” & No Development in “industrial areas” allowed until improvements to Dolan Road & Highway 1 Intersection
  - b. Clarify terms “industrial uses” vs. “Any Uses on a Property zoned Industrial” & expansion of Policy to include “Uses”



a. Improper Use of Term “Development”/ Prohibition on Development Until Roadway Improvements -

A recurring linguistic problem in the proposed Policy language of the entire MLCP update is illustrated in ML- 3.3, that is the repeated reference to prohibiting or precluding any or all “Development” unless or until some event occurs.

In almost every Policy in the MLCP, the use of the term “Development” in this way (ie precluding all development), imposes excessive restrictions which are often wholly unintended and wholly unrelated to the goal of the Policy. Use of the term also creates situations where application of the Policy will contradict the state purpose of the Coastal Act itself.

For example:

Here, the obvious goal is to try and minimize any potentially significant traffic impacts associated with expansion of facilities on the industrial properties in Moss Landing.

But, the term “Development” is exceptionally broad. It includes basically any kind of building activity, earth moving, remodeling activity. It also includes new tenants replacing old tenants in existing structures.

Here, the proposed Staff & Community changes to ML 3.3 would state “Development in the industrial areas shall not be allowed until needed improvements are made to the Dolan and Highway 1 Intersection” -

This proposed language/changes in the Staff and Community sections are clearly inappropriate for the following reasons:

First, this language *would preclude replacing one tenant on the MLBP property with another tenant, even if the change in tenants would result in less traffic* than was being generated previously.

This is not the intent, nor the purpose of Policy 3.3 – rather it is simply an arbitrary and improper limitation on MLBP’s business operations, which does not promote the stated policy or the public interests.

Second, this *language would literally preclude MLBP from any “development” including non-occupied structures and those that would provide significant public benefit and which do not increase traffic in any way*. For example it could preclude

- building structures for Solar power generation;
- building structures for receipt of transcontinental underwater cable transmission infrastructure
- activities related to removal of waste products left by Kaiser operations
- building, repairing and/or replacing on site wells, rail spurs, existing or pre-existing structures, facilities,



- As written, it would even preclude the building of new roadway improvements (which constitute Development) until such improvements have been made.
- Aquafarm tanks,
- etc

Third, this language *would prevent any “development” even those types of development and new uses that are specifically prioritized by the Coastal Act, and* would therefore conflict with the Coastal Act and *the existing North County Plan*.

- North County Coastal Plan”
  - Section 3.1 - The prime transportation emphasis of the Coastal Act is to preserve highway capacity for coastal access and coastal dependent land uses
  - Section 2.7 – Aquaculture is a preferred use
  - Section 3.1.3 - “Due to the limited capacity of Highway 1, until the time it is expanded, development of coastal dependent industrial; agricultural; commercial; and recreational uses shall be given priority over non-coastal dependent development...”
- Because, as drafted this policy would preclude MLBP from “developing” any uses, including those prioritized by the Coastal Act”, but would allow other property owners to continue developing, regardless of whether the uses proposed by the other owners are “priority uses” under the Coastal Act, the proposed policy revisions are inconsistent with both the Coastal Act and existing North County Coastal Land Use Policies.

Fourth, the proposed language purports to impose upon MLBP the obligation to persuade Caltrans, the County and the Coastal Commission to effectuate alterations and improvements of the public roadway as a precondition of continuing to use the MLBP, and to even engage in activities which do not impact traffic. This is an *improper imposition of public responsibility for improving and maintaining roadways upon a private landowner*.

- MLBP has, for years, attempted to work with the County and Caltrans and other agencies to improve transportation, pedestrian access, safety etc along the Highway 1 in Moss Landing. The reality is that Caltrans simply won’t do, or allow, anything to be done. The County has been unable to persuade them. MLBP has been unable to persuade them. And Caltrans is unlikely to be persuaded in the near future. But, if the County truly desires for Caltrans to feel pressure to improve traffic and pedestrian conditions and safety, this is not the proper way to effectuate that goal.

Fifth, the proposed policy language is vague. It purports to preclude any “development” until “needed improvements” are made. *What are “needed improvements”? who decides?*



b. Industrial Uses vs. Any Use on Industrially Zoned Property

As discussed below, there has been widespread support, for many years, for treating MLBP property as a “Special Treatment Area” for zoning purposes. This will allow a wide variety of uses, not solely Heavy Industrial Uses, and will also the property to be used in a less intensive and environmentally impactful way.

“Special treatment Area” designation and current marijuana cultivation Policy in Monterey County, and the coastal zone illustrate that there is a significant distinction between “industrial activities and uses”, and “any approved use on an HI zoned parcel”. Necessarily, there exist many “non-industrial uses” that exist and are allowed on industrially zoned coastal properties.

As such, it is essential that every Policy in the MLCP update, clearly and specifically indicate distinguish between “industrial use” and/or zoning designation, such that the intended scope and application of the Policy can be clearly understood by County staff, the public and the landowners. This precise issue has placed County Staff and MLBP in disagreement as to intended meaning of other Policies.

Specifically, one sentence in a 150 page+ document states “all new heavy industry shall be coastal dependent”. MLBP asserted that this language, if applicable, only applied to new heavy industrial uses. The County Staff asserted that this language applied to any activity on any parcel zoned heavy industrial. At a minimum, it is important that the Policy language specifically state and address your intent in this regard.

**Two Solutions:**

**Solution #1** – In this Policy ML 3.3, and in all other policies, the language of the Policy and the scope of any restrictions as to the use or building or activities conducted on private property, should directly relate and be restricted to only those necessary to promote the purpose and intent of the specific policy.

There are those who are simply opposed to other landowners using their private property for any purpose and who seek to utilize the language of every policy to impose universal prohibitions on any business activity, including on MLBP. Its simply not proper or logical to do so.

Here, the purpose & intent of this Policy is related to traffic. As such, any restrictions on building, uses or activities (imposed on MLBP or others), in this Policy, should be restricted to and related to those necessary to address traffic issues. This Policy should, and must, not restrict or prohibit any activity or use, or development or building that does not adversely impact traffic.

**Solution #2** – Policy ML 3.3. The best Policy solution and idea regarding traffic and pedestrian access Policies in the MLCP was presented by Mr. Mark Del Piero, on behalf of the Harbor District, at a recent community meeting.



Mr. Del Piero noted correctly, that Caltrans is the impediment to solving many of the traffic and pedestrian issues in Moss Landing, and Highway 1. *Mr. Del Piero suggested that the County would be best served to direct its Policy language on these issues directly towards Caltrans, in order to obtain their compliance.* Mr. Del Piero suggested that the County Policy preclude Caltrans from performing any work or improvement on Highway 1 (or other areas), unless and until it effectuates needed improvements to the Dolan intersection changes and/or Pedestrian access across Highway 1

Rather than randomly imposing the obligation on a private landowner, such a policy would place the burden to solve these problems where it belongs, with Caltrans, the party with the power to actually fix the problems.

Mr. Del Piero noted, that the County could collect development fees to retain from private land owners, which could be used to later fund such improvements, if and when Caltrans ultimately approved the projects. This seems to be a reasonable suggestion.

## **II. SPECIAL TREATMENT AREA DESIGNATION vs. COASTAL HI ZONING**

As you know, for more than a decade, there has been widespread support of designating MLBP as a “Special Treatment Area” for zoning purposes.

The special treatment zoning designation is intended to provide flexibility as to the types of uses allowed on the property, as opposed to mandating only Heavy Industrial types of uses. The intent has always been to allow MLBP to move the property away from the highly intensive and environmentally significant impacts that had, for many decades, been associated with Kaiser Refractories use of the property for large scale seawater intake, mineral extraction, processing, brick production plant and dozens of related peripheral uses.

MLBP believes that the idea of “Special Treatment Area” designation and the transition of this property away from such intensive HI only uses has the support of Monterey County, the California Coastal Commission, Caltrans, members of the Moss Landing local community, environmental interest groups, the Moss Landing Harbor District, and almost every interested group and agency.

### **A. Concern That Current Community Plan Language Will Not Effectuate Goal/Intent**

Unfortunately, MLBP is concerned that the Moss Landing Community Plan (“Plan”) language which is intended to effectuate the Special Treatment Area Designation will not effectuate its intended purpose unless it is modified.

Specifically, as drafted the Plan states that the Special Treatment Area Designation is structured as an “overlay”, being placed on top of a continuing “Coastal HI” zoning designation for the MLBP property.



Presently, the North County Land Use Plan repeatedly refers to Kaiser Refractories in the Heavy Industry definitions and makes no mention of Moss Landing Commercial Park in the Special Treatment Area section. Similarly, Figure ML-6: Land Use Diagram of the August 2017 draft of the Moss Landing Community Plan, shows Moss Landing Commercial Park as “Coastal Heavy Industry”.

The problem with this structure, ie. having a “Special Treatment Area” overlay, but retaining a Coastal HI zoning designation is that Section 1.5 of the Moss Landing Community Plan states,

“To the degree that policies in any one of the documents – the Moss Landing Community Plan, the North County Land Use Plan, and the 1982 Monterey County General Plan – conflict, the more restrictive policy applies.”

Various other rules of interpretation and construction in the Monterey County Code and other laws and regulations would also support this proposition.

As such, as currently structured, even though MLBP, the County, the Coastal Commission and other interest groups might reach consensus and support certain uses within the MLBP “Special Treatment Area”, legally any uses not authorized by the Coastal HI designation would likely be prohibited. This is clearly not what is intended. Rather, the entire purpose of the Special Treatment designation is to provide greater flexibility in use of the property.

To effectuate this goal, the structure of implementing the Special Treatment designation in the Plan should be modified.

#### **B. How To Solve This Issue via Modified Language / Provisions**

There are several possible ways to resolve this issue.

The easiest and most simplistic method would be to simply remove the “Coastal HI” zoning designation and instead simply zone the MLBP as only a “Special Treatment Area”.

Alternatively, the “Plan” could include additional language to be included within the “Coastal HI” provisions and perhaps also within the North County Plan language and the related implementing ordinances which explains that the MLBP “Special Treatment Area” overlay/designation takes priority over the more general Coastal HI regulations, such that the uses authorized as part of the Special Treatment Area would override any conflict with the Coastal HI zoning restrictions.

Undoubtedly, there are also other potential drafting solutions, and MLBP is amenable to any method the County and/or Coastal Commission prefer.

But, something must be done. In all honesty, it is rare to have consensus among a property owner and all of the above groups. Where, as here, it exists, its worth the effort to make sure that the language and structure of the implementing ordinances effectuate the common goal.





**III. CONCLUSION**

Thank you for the opportunity to comment on these important changes.

MLBP appreciates your careful consideration of these issues and is more than willing to assist and work with staff to effectuate any changes in language that will effectuate your purpose and intention, if you desire to simply provide us with guidance, rather than attempting to craft new language.

Yours Truly,

**Moncrief & Hart, P.C.**

A handwritten signature in black ink, appearing to read 'Paul Hart', is written over the printed name.

Paul Hart, Esq.

Attorneys for MLBP

# **EXHIBIT B**

PAUL W. MONCRIEF  
L. PAUL HART  
DENNIS J. LEWIS  
KOREN R. MCWILLIAMS  
LINDA N. SUNDE

**MONCRIEF & HART**  
A PROFESSIONAL CORPORATION

16 W. GABILAN STREET  
SALINAS, CALIFORNIA 93901  
PH: (831) 759-0900  
FX: (831) 759-0902  
*MoncriefHart.com*

September 11, 2019

File No. 6377.022

**VIA HAND DELIVERY**

Monterey County Planning Commission

**RE: Moss Landing Community Plan Update Public Workshop – GPZ090005; Moss Landing Business Park**

Dear Commissioners:

Thank you for your continued work on the draft Moss Landing Community Plan (“MLCP”) and the opportunity to comment on the proposed plan, on behalf of our client Moss Landing Commercial/Business Park (“MLBP”). I write today to clarify MLBP’s position on certain language presented in Staff’s Report and updated draft policies.

**2019 Policy No. NCLUP-ML-NEW1 Staff Recommendation**

In Exhibit A, Staff proposes an entirely new, never before presented to the public, draft policy of the 2019 Policy No. NCLUP-ML-NEW1 Staff Recommendation. The draft policy proposes to severely restrict any use of the MLBP property. The draft provides:

**2019 Policy No. NCLUP-ML-NEW1 Staff Recommendation**

*Development within the Moss Landing Business Park Special Treatment Area (Figure ML-6) shall be subject to the following:*

- 1. Uses are limited to coastal-dependent uses, coastal-related industrial uses, and the following coastal priority uses: Natural Resource Preservation and Protection, and Agricultural Uses (including research, commercial cannabis activity and aquaculture).*
- 2. Residential (other than caretakers’ units) and Commercial development is not allowed.*
- 3. Direct Motor Vehicular access to the portion located west of Highway 1 is not allowed from Highway 1 or Moss Landing Road.*
- 4. Approval of a comprehensive General Development Plan that analyzes the following:*
  - a. Proposed circulation improvements and their location;*
  - b. Categories of proposed land uses and their location;*
  - c. An approximation of the proposed potential development intensity for each proposed use;*
  - d. The coastal dependent/related/priority nature of proposed uses (including the use of seawater); and*
  - e. Potential land use conflicts between different categories of use, and the protection of unique natural resources on and around the site.*
- 5. Development of industrial operations that can reuse waste heat or other effluent streams from industrial facilities within the Moss Landing Community, or that utilize coastal resources, as part of their processes is encouraged.*



For the reasons indicated below, MLBP objects to the draft 2019 Policy No. NCLUP-ML-NEW1 Staff Recommendation.

For more than a decade there has been broad-based support and agreement that MLBP would be designated as a Special treatment Area in conjunction with the MLCP update. Consensus on a special treatment area designation primarily arose from several important concepts. First, there is significant public support for transitioning this property from more environmentally intensive uses, such as the Kaiser Heavy Industrial Operations, to less environmentally intensive uses that would accompany a typical, business park including light industrial and commercial uses rather than primarily heavy industrial uses. Second, there is public and governmental support for allowing this parcel to create new jobs and business growth and revenue in the moss landing region. Third, the public and local government authorities recognize that this is an extremely large property, which requires greater flexibility in available uses in order for the property to be economically productive. Additionally, imposing multi-layer restrictions on the types of uses allowed on the property greatly impedes the repurposing and economic and job growth. Fourth, it is simply not appropriate to apply the term coastal-dependent uses to this property in any way. Coastal dependent uses are restricted to only those uses that require being “on or adjacent to the sea”. This property is not on or adjacent to the sea, except one parcel on the West side of highway 1. As such, none of the other 200+ acres could ever have a coastal dependent use, as a matter of law. So, that phrase should not be applied to those portions of the property.

Additionally, the staff recommended language uses the phrase “coastal-related industrial uses” as one of only two viable economic uses. The other being Agricultural uses. This is highly over-restrictive. It not only restricts use of the property to coastal related uses, but it further insists that such uses be solely industrial in nature. It is simply unrealistic to believe that a property of this size could achieve even 10-15% use capacity if restricted in this manner.

Most importantly, these restrictive definitions and limitations on uses completely undermine and eliminate the agreement to use a Special Treatment Designation to expand, rather than contract, the types of available uses on the Property.

After more than a decade of agreement that the available uses would be expanded, and a special treatment designation applied to effectuate the common goals above, it is inexplicable that Staff has now, with the stroke of a pen, eliminated that entire concept and understanding that has been in place since the committee evaluated this issue in 2007.

MLBP has been given no explanation for this 180 degree shift in position. Nor does MLBP believe that these restrictions are consistent with public or governmental goals. The above restrictions certainly do not comport with the position that county officials have discussed and advocated to MLBP for more than a decade.

MLBP strongly urges you to not accept these draconian limitations on use of this large property, and instead asks that the Planning Commission instruct staff to return to the concept of Special Treatment Designation, with appropriate uses and limitations being addressed in that individualized and focused evaluation, rather than micro planning as to a single parcel as part of the MLCP.



To do otherwise is to single out one property owner for unprecedented restrictions, and to border on imposing a regulatory taking.

The following provides examples from the North County Land Use Plan (“NCLUP”) and related documents evidencing that the use of the MLBP land should not be and is not restricted to Coastal Dependent or Coastal Related, but that such use is encouraged:

1. Appendix B to the NCLUP, Sections 10 and 12, Glossary of Terms, define “Coastal-Dependent Development or Use” and “Coastal-Related Development”:

*10. Coastal-Dependent Development or Use: Any development or use which requires a site on or adjacent to the sea to be able to function at all. (Coastal Act)*

....

*12. Coastal-Related Development: Any use that is dependent on a coastal dependent development or use. (Coastal Act)*

As indicated prior, MLBP is not located on or adjacent to the sea. In fact, Staff points out this fact in the fifth paragraph on Page 20 of Exhibit A stating that “[t]he portion of the site east of Highway 1 does not have access to the harbor or the sea, which significantly affects the ability to utilize the developed area for coastal-dependent and coastal-related uses,” and Staff goes on to point out how restriction of the MLBP site to Coastal Dependent uses doesn’t make sense and prevents use of the MLBP site, with “...without access to the water for the majority of the Business park, the definition of Coastal Dependent makes use of the site unlikely”.

2. Section 2.C.a of the 2009 Committee Recommendation provides in pertinent part that:

***“The committee finds that the business park should allow Coastal Dependent and Coastal Related Industrial Uses to be in keeping with the Coastal Act. However, the site needs a designation that provides for the range of uses normally found in a business park.”***  
**(Emphasis Added.)**

The 2009 Committee Recommendation is to *allow* coastal dependent and coastal related industrial uses, and to provide for typical business park uses. No reference is made in the draft policy for language indicating the range of uses normally found in a business park. Also, the designation in the draft policy of allowing the coastal priority use of “Natural Resource Preservation and Protection” is definitely NOT a use normally found in a business park. Further “Natural Resource Preservation and Protection” is not a NCLUP Land Use Category, which would leave enforcement of its parameters up to interpretation and its uses uncertain. “Resource Conservation” appears to be the closest NCLUP Land Use Category, and that Category generally allows no development. Designation of the MLBP as a Special Treatment area allowing uses normally found in a business park, consistent with the 2009 Committee Recommendation, would provide an alternative to the current Heavy Industry use that could be less intensive and less environmentally impactful.



3. Section 4.3.6.F.1 of the NCLUP provides in pertinent part that “Lands designated for Heavy and Light industrial use in the North County Coastal Zone, shall be reserved for coastal dependent industry...” Such section specifically states lands designated for “Heavy...industrial use...” The Board of Supervisors Resolution No. 18-071, attached to the Staff Report as Exhibit L (amending Section 4.3.6.F.1) incorrectly emphasized the land designation to “coastal dependent.” The lands are *designated as heavy industrial*, not *designated* as coastal dependent. Section 4.3.6.F.1 properly indicates that heavy industrial and light industrial lands in the North County Coastal Zone be *reserved – NOT restricted –* for coastal dependent industry. The only exception would occur, as provided in Section 5.5.2.10 of the NCLUP, for NEW heavy industry.
4. Evidence of the non-restricting nature of the use of “coastal dependent” is found on page 96-97 of the NCLUP in Sections 5.5.1 and 5.5.2 which show “encouragement” for such use, and in the glossary definition of coastal dependent which requires specific location for coastal dependent use:

#### *5.5.1 Key Policy*

*Existing coastal dependent industries in Moss Landing have local, regional, statewide and, in some cases, national significance. Accordingly, the county shall encourage maximum use and efficiency of these facilities, and to allow for their reasonable long-term growth consistent with maintaining the environmental quality and character of the Moss Landing Community and its natural resources. (Emphasis added.)*

#### *5.5.2 General Policies*

1. *Coastal dependent industrial facilities should be encouraged to expand within existing sites before off-site expansion is considered. Commercial fishing activities and aquaculture shall have priority over other types of coastal dependent industrial uses in Industrial areas. The Kaiser industrial facility at Moss Landing should be permitted to expand within the existing site subject to conforming to all other requirements of this plan, and other State and Federal regulations. (Emphasis added.)*

Finally, allowance of the uses indicated in Section 2 of the new draft policy are determined pursuant to the permitting process, and the restrictions and requirements set forth in Sections 3 and 4 of the new draft policy are determined pursuant to a general development plan and the permitting process. This is consistent with NCLUP Section 5.5.2.2 which provides for “master plans” for future expansion, improvement or other development for the MLBP land. It is also consistent with Staff Recommendation for draft 2019 Policy No NCLUP – ML - 2.5 requiring the approval of a General



Development Plan prior to considering future expansion, improvement, or other development of industrial facilities within the MLCP.

In summary, the new draft policy would severely and unreasonably restrict the use of the property, would restrict use to coastal-dependent and coastal-related in an area that does not meet the requirement of being on or adjacent to the sea, and would render the property unable to be developed or developed only pursuant to extreme limitations that are not applied to other property owners. To reiterate, MLBP strongly urges refusal of the draconian limitations in the draft policy on the use of this large property, and instead asks that the Planning Commission instruct Staff to return to the concept of Special Treatment Designation, with appropriate uses and limitations being addressed, instead of micro planning as to a single parcel as part of the MLCP. To do otherwise is to single out one property owner for unprecedented restrictions, and border on imposing a regulatory taking.

**2019 Policy No. NCLUP-ML-2.10 Staff Recommendation**

MLBP reiterates its prior assertion that any square footage limitation on the MLBP property shall apply only to development or structures that are occupied or habitable. While it is appreciated that Staff agrees that the seawater tanks should be excluded from the square foot limitation, Staff's reasoning behind doing so includes factors typically required and reviewed in a general development plan. Such factors include: typical use not being likely to generate significant traffic, the little or non-use of potable water, the little to no generation of wastewater to the sewer system. Providing that the restriction of square footage limitation applies only to development or structures which are occupiable or habitable would provide further clarity and guidance in the development plan and permitting process review.

MLBP reserves the right to respond on matters provided in communications on the Moss Landing Community Plan Update matter. Thank you for the opportunity to comment.

Yours truly,

**MONCRIEF & HART, PC**

A handwritten signature in black ink, appearing to read 'K R McWilliams', is written over the typed name.

Koren R. McWilliams  
Attorneys for MLBP

KRM/sld

PAUL W. MONCRIEF  
L. PAUL HART  
DENNIS J. LEWIS  
KOREN R. MCWILLIAMS  
LINDA N. SUNDE

# MONCRIEF & HART

A PROFESSIONAL CORPORATION

16 W. GABILAN STREET  
SALINAS, CALIFORNIA 93901  
PH: (831) 759-0900  
FX: (831) 759-0902  
*MoncriefHart.com*

September 25, 2019

File No. 6377.022

VIA HAND DELIVERY

Monterey County Planning Commission

**RE: Moss Landing Community Plan Update Public Workshop – GPZ090005; Moss  
Landing Business Park**

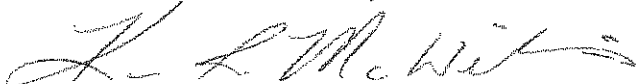
Dear Commissioners:

Thank you for your continued work on the draft Moss Landing Community Plan (“MLCP”) and the opportunity to comment on the proposed plan, on behalf of our client Moss Landing Commercial/Business Park (“MLBP”). I write today to ensure inclusion on the above referenced matter for today’s continued meeting of our letter dated September 11, 2019, which letter was submitted via hand delivery to the Planning Commission prior to the September 11<sup>th</sup> meeting. Please see the enclosed copy.

Thank you.

Yours truly,

**MONCRIEF & HART, PC**



Koren R. McWilliams  
Attorneys for MLBP

KRM/sld



# **EXHIBIT C**

PAUL W. MONCRIEF  
L. PAUL HART  
DENNIS J. LEWIS  
KOREN R. MCWILLIAMS  
LINDA N. SUNDE

# MONCRIEF & HART

A PROFESSIONAL CORPORATION

16 W. GABILAN STREET  
SALINAS, CALIFORNIA 93901  
PH: (831) 759-0900  
FX: (831) 759-0902  
*MoncriefHart.com*

July 10, 2019

File No. 6377.022

## VIA HAND DELIVERY

Monterey County Planning Commission

**RE: Moss Landing Community Plan Update Public Workshop – GPZ090005; Moss Landing Business Park**

Dear Commissioners:

Thank you for your continued work on the draft Moss Landing Community Plan (“MLCP”) and the opportunity to comment on the proposed plan, on behalf of our client Moss Landing Commercial/Business Park (“MLBP”). I write today to clarify MLBP’s position on certain language presented in Staff’s Report and request that further information be provided.

### Square Footage Limitation; Wastewater

Staff recommends on page 11 of the Staff Report Discussion (Exhibit A) that:

*“Staff is recommending a limitation of 2 million square feet of floor area or 36,000 gpd of wastewater, whichever is more restrictive, to ensure that the site does not utilize sewer capacity at the expense of other property owners within the Community’s 309,000 gpd capacity. No credit is given for existing square footage, as no sewer is currently serving the site.”*

However, on Page 19-20 under “Other Anticipated Uses”, relating to the Staff recommendation that the MLBP site be limited to 2 million square feet of structural development, the Staff Report goes on to state that “*Staff has taken the position that the 2 million square foot limitation be applicable to all structures on the property as non-habitable space may also generate impacts to traffic, water and wastewater use, which are significant limiting factors at this time for Moss Landing.*”

First, MLBP does not agree that the 2 million square feet limitation should apply to all “development” on the property.

MLBP globally opposes the use of the term “development” in conjunction with the attempts to promote specific policy goals. Instead, specific policy goals should use restrictive language which is narrowly tailored to promote such goals, rather than using the phrase “development” which basically curtails any activity, even merely changing tenants. For example, if the County seeks to promote traffic limitations, then any regulatory restriction on the use of the MLBP property imposed in service of this policy decision should use language limiting the use limitation to an increase in traffic. Such a policy should not



categorically preclude or restrict development based on square footage even where the new or expanded square footage creates no additional traffic. To do so would be arbitrary and capricious and would not reflect any nexus between the policy goal and the restriction.

Similarly, specific policy goals regarding wastewater and water usage should use restrictive language narrowly tailored to promote such goals instead of utilizing overbroad terms which could have the effect of curtailing any activity on the property, including, without limitation, existing rights such as MLBP's existing water rights on the property.

Second, MLBP continues its position that the 2 million square foot limitation shall not include "development" or structures that are not occupied or non-habitable, such as the existing water tanks, solar panels, and other non-habitable or non-occupiable structures. Staff does not indicate that non-habitable space *will* generate impacts to traffic, water and wastewater use, Staff only indicates it *may* generate such impacts. No information or evidence is provided by Staff to substantiate such claim. Further, Staff recognizes on page 10 that the current regulations for the site would allow up to approximately 12 million square feet of floor area, but proposes to limit the square footage to 2 million square footage of all structures regardless of whether they are habitable or not.

Also, as indicated in my May 29, 2019 letter, it is important that Staff include in the MLCP update the total wastewater allowed by the California Coastal Commission ("CCC") in the area covered by the MLCP to ensure that allocations indicated in MLCP update are within such CCC allowance.

**Heavy Industrial/Coastal Heavy Industry Land Use.** As prior indicated in my May 29, 2019 letter to the Planning Commission, MLBP desires that the designation of the MLBP as a "Special Treatment Area", where applied as an overlay of the underlying "Heavy Industrial" or "Coastal Heavy Industry" Land Use Designation, not be restricted by such underlying Land Use Designation Nomenclature. The Special Treatment Area necessarily must also allow for non-coastal dependent and non-coastal related uses and uses that are not heavy industrial in nature. Obviously, this was understood when the Monterey County Board of Supervisors authorized the Cannabis activities on the Property. Such diversity is consistent with the range of uses typically found in a business park and particularly one of this size and particularly, as here, where the property is not located "on, or adjacent to the sea". Accordingly, on page 10 of the current Staff Report, Staff's recommendation that "the Heavy Industrial land use designation/zoning district remain the same but with an updated list of allowed heavy industrial uses" should be revised to provide for uses that are not heavy industrial in nature and found typically in a business park. To leave the heavy industrial designation and restrictions would completely undermine the intent of creating a Special Treatment Area, something that has been agreed upon for nearly 20 years now as a method for reducing the intensity and impact associated with heavy industrial activities, by transferring the property's use to less impactful non-heavy industrial uses.



Further, it is understood that the designation of the MLBP as "Special Treatment Area" is to allow greater flexibility for continued development, however, the current Staff Report makes only one reference to such Special Treatment Area on the top of page 11. Accordingly, further clarification on the application of the Special Treatment Area to the MLBP is requested.

MLBP reserves the right to respond on matters provided in communications and on information provided pursuant to the foregoing requests. Thank you for the opportunity to comment.

Yours truly,

**MONCRIEF & HART, PC**

A handwritten signature in cursive script, reading "K R McWilliams". The signature is written in dark ink and is positioned above the typed name.

Koren R. McWilliams  
Attorneys for MLBP

KRM/sld

Michael W. Stamp  
Molly Erickson

**STAMP | ERICKSON**  
**Attorneys at Law**

Monterey, California 93940  
T: (831) 373-1214

May 26, 2020

Amy Roberts, Chair  
Planning Commission  
County of Monterey  
168 West Alisal Street  
Salinas, CA 93901

Re: May 27 agenda item 5 – Moss Landing Community Plan Update

Dear Chair Roberts and Commissioners:

I write to you on behalf of Friends, Artists & Neighbors of Elkhorn Slough (FANS). FANS co-chair Mari Kloepfel has been actively involved with the MLCP update process since 2008. This letter briefly addresses topics of significant concern.

The Commission directed that the plan be presented in a strikeout/underline format. The staff did not comply. And the version presented to you is unreliable.

We appreciate that the materials were provided in advance, however they were lengthy and not in the format that the commission and counsel had directed. As stated in past commission meetings, the direction to County staff is to update the plan, and the plan was to be presented in underline/strikeout mode so the proposed changes were clear. Only with the information clearly presented can the Commissioners reasonably review the information and discuss it. That did not happen.

As a result, the reader is left at sea as to how the plan would be different, if at all, from the baseline. There is no straightforward way to see what text and policies have been eliminated, and which modified. To make matters worse, the claims in the “new” plan makes claims that items are “from ‘82 plan” but the new plan has made changes to the 1982 text under the masquerade that the text has not changed. As an example, new plan policy 5.4.9.A claims that it is “from” the 1982 plan but in fact it makes material significant changes to the 1982 policy. A side by side comparison follows.

[5.5.1 from '82] Existing coastal dependent and related industries in Moss Landing have local, regional, statewide and, in some cases, national significance. Accordingly, the county shall encourage maximum use and efficiency of these facilities, and to allow for their reasonable longterm growth consistent with maintaining the environmental quality and character of the Moss Landing Community and its coastal resources.

[5.5.1 actually says]: Existing coastal dependent industries in Moss Landing have local, regional, statewide and, in some cases, national significance. Accordingly, the county shall encourage maximum use and efficiency of these facilities, and to allow for their reasonable longterm growth consistent with maintaining the environmental quality and character of the Moss Landing Community and its natural resources.

Contrary to the staff claim that the policy is “from ‘82”, the staff did not tell you that the new plan would materially change the existing 1982 policy as follows:

Existing coastal dependent and related industries in Moss Landing have local, regional, statewide and, in some cases, national significance. Accordingly, the county shall encourage maximum use and efficiency of these facilities, and to allow for their reasonable longterm growth consistent with maintaining the environmental quality and character of the Moss Landing Community and its ~~natural~~ coastal resources.

The undisclosed hidden changes in the new plan would expand the limited focus of the longstanding policy on “existing coastal dependent industries” to an unlimited new category of “and related industries” – an extraordinarily amorphous, undefined and unlimited term, which means these “related” industries would get the benefit of the very generous policy that would require the County to “encourage maximum use and efficiency” and “allow for their reasonable longterm growth, as follows: That was not the original intent of the 1982 plan and that has not been agreed to by the community.

Similarly, the new plan implies that it is carrying over the 1982 policy 5.3.3.6 when the new plan says this:

[1982 Policy 5.3.3.6] The Sandholdt Pier should be rebuilt to accommodate public access, commercial fishing and other appropriate maritime commercial uses.

The impression is false. The new language is a material change from the actual 1982 policy 5.3.3.6 said, and the text has been expanded. The 1982 policy says: “The Sandholdt Pier should be considered for renovation as a fishing pier.”

Thus, the plan before you is unreliable. Please direct the staff to provide to you and the community the underline/strikeout version you directed months ago. FANS asks that you please continue this workshop until that has been presented to you.

Policies that the community has not supported and have no reasonable basis

To make matters even worse, the proposed new text contains information strongly objected to by the community and with no basis in good planning. These include the requirement for “Improved public access and low intensity recreational use also are needed(?) in Bennett and Elkhorn Sloughs. The Moro Cojo Slough, by virtue of its proximity to Highway 1, represents a potential recreational opportunity that could be appreciated by the public in addition to the areas above.” These are highly sensitive resources. The proposal to increase public access and recreational use is unwise and far too broad.

Policies that require blind acquiescence and unfunded mandates

The plan as drafted would require the County and the community to commit now to very costly plans that in some cases have not been finalized and adopted and may not be desired by community, and have no funding source. E.g., "2. [ML-3.2] The County of Monterey shall identify funding to construct and maintain a balanced, multimodal transportation network, consistent with TAMC and Caltrans Plans, that meets the needs of the community and all users of the streets, roads, and highways for safe and convenient travel. The Land Use Advisory Committee shall be involved with providing input for transportation plans."

Specific issues of vague and ambiguous writing

Numerous policies are unclear because they do not provide context or direction as to who is directed to act and when. These policies include those that say certain things "should be developed," "should be provided," and should be "maintained," but provide no direction as to by whom and in what circumstances. Improved drafting is needed.

A growth increase of 1500% to 2400% is not "moderate."

Existing Moss Landing Commercial Park LLC development is apparently somewhere between 125,000 and 200,000 square feet, based on public records; the County has refused to respond to requests by FANS for a definitive figure. County staff now proposes that the inland LLC parcel be allowed two million square feet of development, an increase of 1500 percent to 2400 percent. This is not the "moderate growth" scenario recommended for the site by the 2009 Committee and the community. This 1500 percent to 2400 percent growth would be in addition to the applicant's development of the LLC's harbor-front strip discussed below.

Moss Landing Commercial Park LLC has proposed harbor-front development for a narrow strip of land west of Highway One.

Moss Landing Commercial Park LLC has applied for new uses on the narrow strip of land along the harbor west of Highway One. This strip is designated for coastal-dependent heavy industrial uses. The project is described by the County as "a new pier and boat dock on Moss Landing harbor, fish cooler facility, ice house, market/restaurant and associated improvements." The plan does not address these known development issues with appropriate policy guidance. The plan should not have gaps and omissions.

Sea Level Rise

The community process has not yet had a meaningful discussion of draft policies that would address impacts of sea level rise on Moss Landing. The effort to date has not included adequate consideration by the County of sea level rise. Moss Landing is one of the most vulnerable spots in the unincorporated County to sea level rise, with the

Chair Roberts and Commissioners  
May 26, 2020  
Page 4

low-lying development and the Highway One bridge. Moss Landing is #14 on the list of U.S. communities facing per capita costs greater than \$500,000. Its costs are estimated at \$1,552,000 per person.

(<https://www.climateliabilitynews.org/2019/06/20/seawalls-sea-level-rise-climate-costs/>)

The policies adopted in the plan update will have long-reaching effect. The new changes proposed by the Coastal Commission staff released by the County today are significant and we have not had time to review them. This issue should be continued to another workshop so you and we have time to review them adequately.

#### Many other issues

We have many other issues of concern, which may or may not be addressed by the strikeout/underline version of the plan. We share many of the topic of concern that MBARI has identified. FANS also has identified numerous detailed questions and concerns that we would like to address, many of which could lead to recommendations for specific changes to the current draft. FANS believes that given the breadth and depth of its concerns, the most efficient way to proceed would be to meet with the staff rather than present an exhaustive list of comments at this time. With such a meeting, it is possible that some issues could be cleared up by better understanding of intent and clearer drafting, and we could discuss a variety of issues in depth that would help us advance specific suggestions.

#### Request: continue the workshop to a future date.

FANS joins in the MBARI request that the Planning Commission defer consideration of the MLCP update until all stakeholders have met with staff on the underlined/strikeout plan. Given the range of issues that the new and unreliable document has presented, FANS requests that you ask staff to meet with FANS representatives promptly.

On a final very important note, this is a very bad time for nonprofits, volunteers and community members to spend hours and hours on complicated unreliable documents. During the pandemic folks are just getting by in their personal and professional lives. The plan update has been in the works for more than ten years. FANS asks that the County show some understanding and cooperate on the schedule.

Thank you for your consideration of these points.

Very truly yours,

STAMP | ERICKSON

*Molly Erickson*

Molly Erickson



**From:** [Roger](#)  
**To:** [293-pchearingcomments](#)  
**Cc:** [Nancy Russell](#); [Jane Edberg](#)  
**Subject:** Comments on #GPZ090005 Moss Landing Community Plan  
**Date:** Tuesday, May 26, 2020 4:15:32 PM

---

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe. ]

Attention: Planning Commission

Thank you for meeting to discuss the Moss Landing Community Plan. My wife and I have been residents of Moss Landing Heights since 2001.

Many of the residents on Pieri Court including myself have attend countless local area planning meetings and workshops over the years. In years past the neighbors of Moss Landing Heights had no joint representation. The county often looked to the Chamber of Commerce as a representative of the residents. I was president of the Chamber of Commerce when it was agreed and voted on to allocate Duke Energy (then) money to include the Moss Landing Heights community in the undergrounding of overhead utilities project (as a 20B project).

There are issues that the residents of Pieri Ct especially want to be sure are considered in the Community Plan:

- The engineering plan for the underground wiring for Pieri Ct needs to be in the appendix. This plan is critical to ensure that eventually the wires on Pieri Ct will be put underground.
- The community plan needs to include language that says the staff will work with the community to secure funds to implement the Pieri Ct underground wiring. Engineering and working plans have already been completed for this project.
- At one meeting we were assured that the sidewalk on the west side of Moss Landing Rd will be extended from the downtown past the cemetery all the way to Moss Landing Heights. A bike lane will also be part of that extension. Please be sure this is in an addendum to the plan.
- The speed of traffic is currently allowed to be 55MPH into Moss Landing. Traffic speed and entry and exit needs to be addressed.

Many of us on Pieri Ct agreed to these issues last year.

Thank you for considering these comments.

Roger and Jane Edberg  
10946 Pieri Court

831-234-7002

May 23, 2020

Chair Amy Roberts and Members of the Planning Commission  
Monterey County  
Salinas, CA

RE: Draft Moss Landing Community Plan

Dear Chair Roberts and Planning Commissioners:

I want to thank you and the staff for making the latest Moss Landing Community Plan (MLCP) draft available to allow for a thorough review prior to the May 27 Workshop. There is a lot to assimilate in this new version of the plan. I also appreciate the amount of work that has gone into this latest draft, as well as well as during prior years of this process.

MBARI's planning team has identified numerous detailed questions and concerns that we would like to address, many of which could lead to recommendations for specific changes to the current draft.

After further consideration, we concluded that given the breadth and depth of our concerns the most efficient way to proceed would be to meet with the staff rather than present an exhaustive list of comments at this time. With such a meeting, we believe some matters could be cleared up by better understanding of intent, and we could discuss a variety of issues in depth that would help us advance specific suggestions.

Given the range of issues that have been brought to my attention, I request that you ask staff to meet with my team as soon as possible, either prior to or soon after the upcoming workshop. I further request that the Planning Commission defer consideration of the MLCP until such time as stakeholders have met with staff on its contents.

To give you a sense of what we would like to discuss, our questions and comments generally fall within the following broad categories:

**1. Purpose of the Plan:** We have understood that a key goal of the MLCP has been to create certainty and clarity that would facilitate permit application and approval of future projects by streamlining the review process. This draft of the MLCP appears to be moving away from that goal in some regards. New procedures and policies are now appearing that are likely to complicate rather than simplify the project review process for everyone in the Plan area, MBARI included. We think a focused discussion with staff on this point would be beneficial in focusing guidance for all future permit applicants.

**2. Information Gaps:** We see several gaps in information, some of which staff have noted. These include the water assessment, the effect of the Coastal Commission's newly adopted Coastal Resiliency Guidelines, and the AMBAG resiliency plan currently in development. Thorough consideration of the Coastal Commission's Coastal Resiliency Guidelines is necessary before serious consideration should be given to the Coastal Hazards section. Deferred information has the potential to affect the viability and

direction of the plan. We would like to discuss these gaps with staff, their expectations for filling them, as well as their potential implications.

**3. Uncertainty:** The MLCP defers policies such as design guidelines and other implementation measures. This makes it difficult to understand the meaning and practical effects of some of the policies in the current draft. We think there are ways to improve the plan in this regard and would like to bring those ideas to the staff for further consideration.

**4. Internal Consistency:** We have noted several key policies that appear to be contradictory in intent and implication. Perhaps some of this is simply reflective of “drafting-in-progress”, but nonetheless constitute substantive issues of concern from an implementation perspective. These inconsistencies should be brought to the staff’s attention as soon as possible, before the MLCP nears completion.

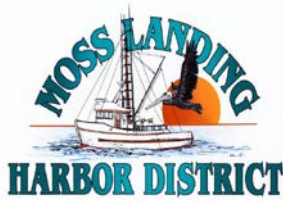
MBARI’s guiding principles from the beginning are to be constructive, helpful, and collaborative in this planning process. It is important to everyone in the MLCP area that the Plan be concise in language, clear in intent, and practical as to implementation. We are prepared to devote time and effort to support you and the staff in moving the Plan toward that goal.

Thank you for your work and consideration of our request.

Sincerely,



Chris Scholin  
MBARI President and CEO



**BOARD OF HARBOR COMMISSIONERS**  
Russell Jeffries  
Tony Leonardini  
Vincent Ferrante  
James R. Goulart  
Liz Soto

7881 SANDHOLDT ROAD  
MOSS LANDING, CA 95039

TELEPHONE – 831.633.5417  
FACSIMILE – 831.633.4537



**GENERAL MANAGER**  
HARBOR MASTER  
Tommy Razzeca

May 26, 2020

TO: Monterey County Planning Commission  
FROM: Moss Landing Harbor District  
RE: Errors and Omissions in the Staff Report Regarding the Moss Landing Community Plan Amendments

Dear Members of the Planning Commission and staff:

The Moss Landing Harbor District is largely supportive of the staff recommendations. However, the District is deeply troubled by some proposed policies and herewith respectfully submits the following concerns and objections regarding factually incorrect and misleading statements and assertions that are included in the current staff report. We request that the draft language be changed to reflect our requests.

1. On Page 12 of the staff report, there is the beginning of an extensive discussion about the groundwater issues and hydrogeology of the Moss Landing area that relies exclusively on the 1995 “FUGRO” study that was commissioned by the Monterey County Water Resources Agency to examine groundwater issues in the North County area. As part of the modeling for that study, NO EVALUATION of well logs located north of the Moro Cojo Slough was incorporated into the analysis by the consultants. The conclusions of that report as they apply to the Moss Landing area were speculative extrapolations that assumed that the hydrogeology of the Moss Landing area was identical to and part of the Salinas Valley Groundwater Basin. This conclusion is incorrect and was fully refuted by the subsequent **1998 Montgomery-Watson hydro-geologic study** that was also paid for and accepted by the Monterey County Board of Supervisors and prepared for the Monterey County Water Resources Agency. The subsequent Montgomery-Watson study was prepared in order to identify the areas that were part of the Salinas Valley Groundwater Basin so that those areas could be included into the assessment district for the “Rubber Dam” project that was built about 16 years ago. The Montgomery-Watson study defined more precisely the areas where the benefits of the Rubber Dam’s percolation and water supply would be delivered. NO BENEFITS were identified for the areas of The Highlands South region north of Moro Cojo Slough nor were there any hydrologic benefits from the Rubber Dam in The Highlands North (Prunedale) area (see M-W map of potential benefitted areas). A review of well logs in these areas show marked differences from the hydrogeology of the Salinas Valley. In spite of these subsequent, factual findings in the **1998 Montgomery-Watson report**, the County proceeded to implement assessments upon land owners in the Prunedale and Moss Landing areas so as to make the Rubber Dam project “affordable” and economically viable for land owners in the “benefitted area”.

*SERVING COMMERCIAL FISHING AND RECREATIONAL BOATING SINCE 1947*

The reliance on the FUGRO Study is misplaced and the absence of any references to the 1998 Montgomery-Watson study that was prepared for MCWRA undermines the credibility and truthfulness of the staff's draft statements and recommendations regarding water supplies in Moss Landing. This deficiency is not the fault of Planning Staff. The Board of Supervisors publicly accepted 1998 Montgomery-Watson report, and it should have been provided to RMA planners by the MCWRA. The entire draft MLCP hydrogeology section, its findings, and the policies of the staff report needs to be re-written to reflect the actual facts about the hydrogeology in the Moss Landing area. Draft Exhibit C-2 must be replaced (because it is factually incorrect) with the more accurate 1998 Montgomery-Watson Report.

2. On Page 14, Paragraph 4 of the staff report, and in order to comply with state law, the paragraph should be re-written to read:

“Historic consumptive groundwater use, that has been perfected by prior appropriation (Moss Landing Industrial Park) and/or pursuant to prior court adjudicated rights (Pajaro-Sunny Mesa Community Services District), may be transferred (pursuant to state law and upon agreement of all parties) by the holder of those appropriative rights from one parcel to another within the boundaries of the Moss Landing Community Plan area.”

3. On Page 21, Section A.1, the words “by CALTRANS” must be inserted after the phrase “existing access points to Highway 1 shall be consolidated (by CALTRANS) . . . .”.
4. On Page 18, Paragraph F. 2., the words “by the California Department of Beaches and Parks” must be inserted after the words “Bulkheading and other measures . . . .”.

The Harbor District respectfully requests that our proposed changes be considered for incorporation into the draft plan policies to give specificity and definition to the responsible parties for the implementation of these requirements of the California Coastal Zone. Additionally a comment letter was submitted by the California Coastal Commission late last night and the Harbor District did not enough time prior to this meeting to review and respond to that letter. Furthermore the District request that we be allowed to participate in all future stakeholder meetings to help facilitate the proper and correct completion of the MLCP update.

Respectfully,

Tommy Razzeca  
General Manager  
Moss Landing Harbor District  
[Razzeca@mosslandingharbor.dst.ca.us](mailto:Razzeca@mosslandingharbor.dst.ca.us)

# Planning Commission Hearing May 27, 2020 Agenda Item No. 5 Moss Landing Community Plan Update

From: [GayleneEisner](#)  
To: [Magana\\_Sophia\\_45306](#)  
Subject: Moss Landing Hearings and Comment Period  
Date: Wednesday, May 27, 2020 12:21:03 PM

---

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Dear Supervisors:

My name is Gayle Eisner and I am a resident of Moss Landing at 10937 Pieri Court in the housing development area near the Moss Landing Cafe. I have attended many hearings in the past on the Draft Plan for Moss Landing. Currently, I have been stationed in Yellowstone National Park. It is not business as usual here. The release of this draft plan could not have happened at a worst time due to the pandemic. After waiting for more than ten years for this plan to be updated, why the push to have this comment period when we are not only in a pandemic, but also pending a major Recession? It is not business as usual in Monterey County. People need time to adjust to the new way of life and how they are going to weather the outbreak financially. The least item on their minds at the moment is to read a 1000 page document in an attempt to understand the upcoming consequences of the draft plan.

Further, While scanning through the new draft, I find it impossible to see where the old plan is modified and what is new and what is missing. I recall the Planning Commission Workshop some months ago that one Commissioner and County Counsel agreed that the Charter by Monterey County staff is to UPDATE the existing plan. It is not clear what is the 1982 plan and what is the new plan?

In conclusion, please be considerate of those who have hardships right now and wait until after the pandemic subsides and things get back some to business as usual. Please postpone these public workshops until a more convenient time/date.

Thank you kindly for your consideration,

Sincerely,

Gayle Eisner  
Resident of Moss Landing

Sincerely,

Gaylene Eisner  
Picture



This page intentionally left blank