



AGENDA NO: 9.b

MEETING DATE: March 25, 2025

Staff Report

TO: Honorable Mayor and City Council

DATE: March 17, 2025

FROM: Airlin Singewald, Community Development Director

SUBJECT: Authorize Community Development Director to request the Coastal Commission transfer permitting jurisdiction to the City for specified areas in accordance with Section 30613 of the Coastal Act

RECOMMENDED ACTION

Authorize the Community Development Director to send the attached letter requesting the Coastal Commission transfer permitting jurisdiction to the City for specified areas in accordance with Section 30613 of the Coastal Act.

ALTERNATIVES

The Council could decline to request a transfer of permitting jurisdiction for the specified areas from the Coastal Commission to the City. The power plant property would remain split between Coastal Commission retained jurisdiction and City permitting jurisdiction. This means a future development project on the power plant property would require separate Coastal Development Permit (CDP) approval from the City and Coastal Commission, unless the Coastal Commission agrees to process a consolidated CDP for such development. This could result in an uncertain and inefficient permitting process.

FISCAL IMPACT

The recommended action may have a positive fiscal impact as the City would collect fees to recover the cost of processing development projects in the City's permitting jurisdiction. The City would not have the same ability for cost recovery to engage in the Coastal Commission's permitting process.

SUMMARY

The California Coastal Commission (CCC) has recently discovered original tideland surveys that affect the boundaries of retained permit jurisdiction within certain areas of Morro Bay's waterfront district. These surveys expand the permit jurisdiction of the CCC in the Embarcadero and create a potential conflict over any future development on the former Morro Bay power plant property. To resolve this potential conflict and return permitting authority over the eastern portion of the Embarcadero to the City, CCC staff are recommending that the City initiate a transfer request under Section 30613 of the California Coastal Act. Enacted in 1982, Section 30613 of the Coastal Act allows the CCC to delegate its original permit authority over potential public trust lands to local governments after consultation with the California State Lands Commission (CSLC), provided that those lands are determined to be (1) filled and developed, and (2) located within an area which is committed to urban uses.

Prepared By: EV

Dept Review: AS

City Manager Review: _YK

City Attorney Review: _RWS

CCC staff have found that both subject areas (the Morro Bay Power Plant/Triangle Lot and Embarcadero – Inland) meet the qualifications for transfer under Section 30613. City staff agrees with the CCC staff determinations, and recommends that City Council authorize the Community Development Director to initiate the transfer process by requesting such action from the CCC. By receiving permitting authority over the Power Plant property, the City becomes the decision-making agency for development permits on the site (subject to CCC appealability). By receiving the transfer of permitting authority over the parcels on the eastern side of the Embarcadero, the City retains the permitting authority it has historically exercised in the area. In other words, initiating the transfer will keep things the way they have always been along the Embarcadero.

The current retained jurisdiction boundaries have been in place since 1991, when the City went through the process of approving its post certification maps as part of its Local Coastal Program (LCP). These maps show important land use features like these permitting boundaries, as well as where the Coastal Appeals Jurisdiction is in effect and where the boundaries of the Coastal Zone itself are. The map below illustrates the current boundaries of CCC's retained jurisdiction (seaward of the green line) compared to what the new boundary would look like if the jurisdiction transfer were to be approved (in red crosshatching). The boundaries of the jurisdiction along the Embarcadero do not change, while the City gains jurisdiction around the power plant property to the north.



Effectively, the requested action would increase local control over land use on the Embarcadero by:

1. Transferring permit jurisdiction over a portion of the power plant property and City-owned triangle lot and boat storage yard from the CCC to the City. This is an area that was recently discovered to include filled tidelands and, as such, is deemed CCC jurisdiction, unless transferred to the City following the process described in this report. This is a change from the current mapping, which places a portion of the power plant property and most of the triangle lot and boat storage yard in CCC's permitting jurisdiction.
2. Transferring permit jurisdiction on the east side of the Embarcadero (from 456 to 988 Embarcadero) from the CCC to the City. This area is already shown on the City's official maps as being within the City's jurisdiction. As such, this action would not change permitting or jurisdiction compared to historic practices. It would only initiate the correct legal process to grant the City permitting jurisdiction over these filled tidelands.

The recently discovered tidelands survey also has the effect of transferring the pedestrian trail area (linking the Embarcadero and former wastewater treatment plant site) from CCC to City jurisdiction.

In all of the above cases, the new areas of City jurisdiction would be subject to CCC appeal authority. As such, the CCC would continue to have final decision-making authority on any project approval in the identified areas.

BACKGROUND

All but eight of Morro Bay's 5,715 parcels are located within the Coastal Zone, an area of protection created by the California Coastal Act of 1976.

The Coastal Act requires a Coastal Development Permit (CDP) for nearly all development in the Coastal Zone.¹ With the passage of the Coastal Act, the California Coastal Commission (CCC) took over permitting authority over all development in the Coastal Zone.

The City gained CDP jurisdiction when the CCC approved the City's Local Coastal Program (LCP). However, the CCC retained permitting jurisdiction on any tidelands, submerged lands, and lands subject to the public trust. These are known as areas of Coastal Original Jurisdiction (COJ). To this day, any development within COJ must obtain a CDP directly from the CCC (i.e., the City has no authority to issue a CDP in COJ areas). This includes all development west of the Embarcadero. Such development often requires a separate land use permit (e.g., a Conditional Use Permit) from the City in addition to a CDP from CCC.

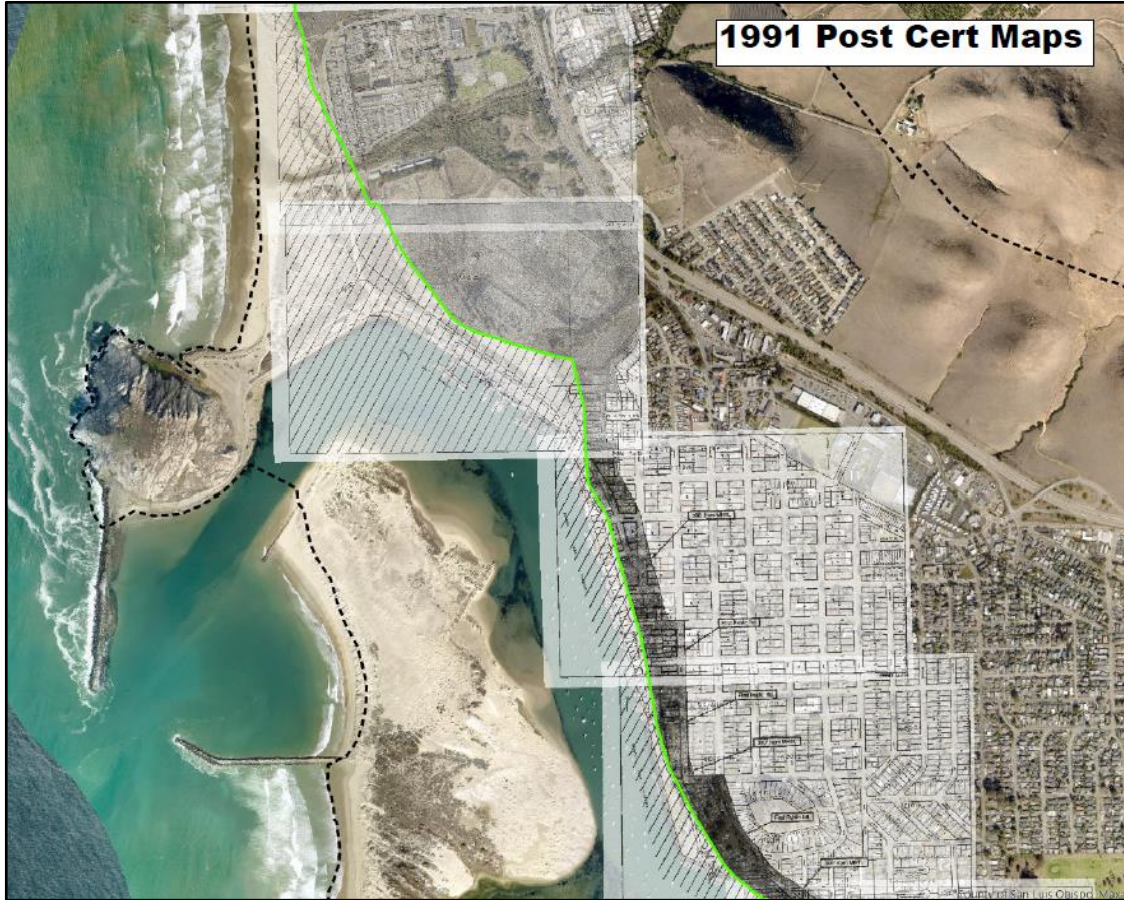
The Coastal Act and City's LCP also specify certain geographic areas where the City's CDP jurisdiction is subject to an appeal to the CCC. This includes areas between the sea and the first public road paralleling the sea; within 100 feet of an environmentally sensitive habitat areas; and within 300 feet of a beach or coastal bluff. Any decision by the City to approve a CDP in one of these "Appealable Areas" may be appealed to the CCC.

DISCUSSION

¹ Some development, such as repair and maintenance that doesn't increase size or capacity and residential remodels or additions, are exempt from a CDP.

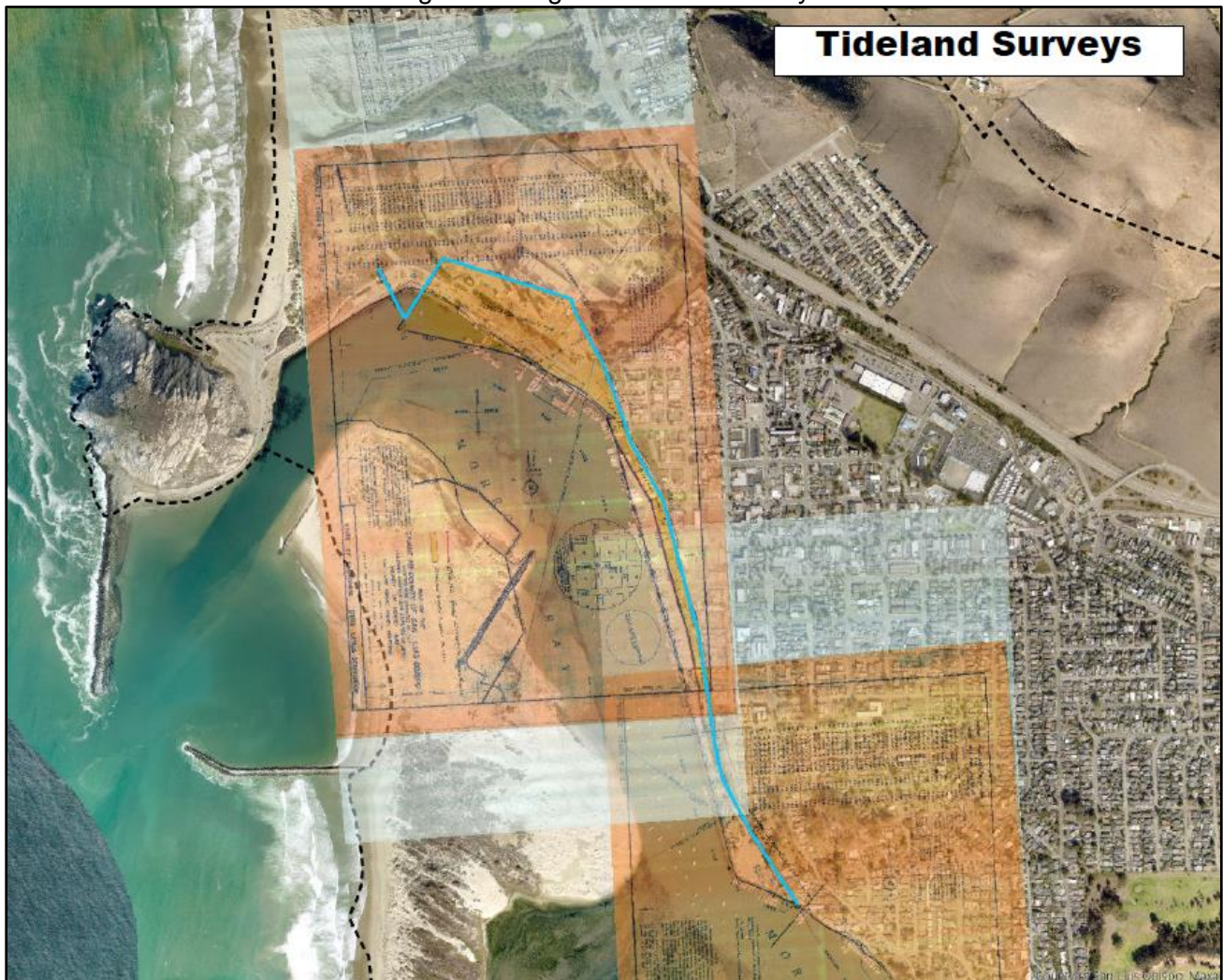
The distinction between lands under Coastal Commission permitting jurisdiction and the City's permitting jurisdiction was last updated in 1991. Figure 1 below, provided by Coastal Commission staff, illustrates the boundaries along the waterfront that we are familiar with today.

Figure 1: Current Permit Jurisdictional Boundaries



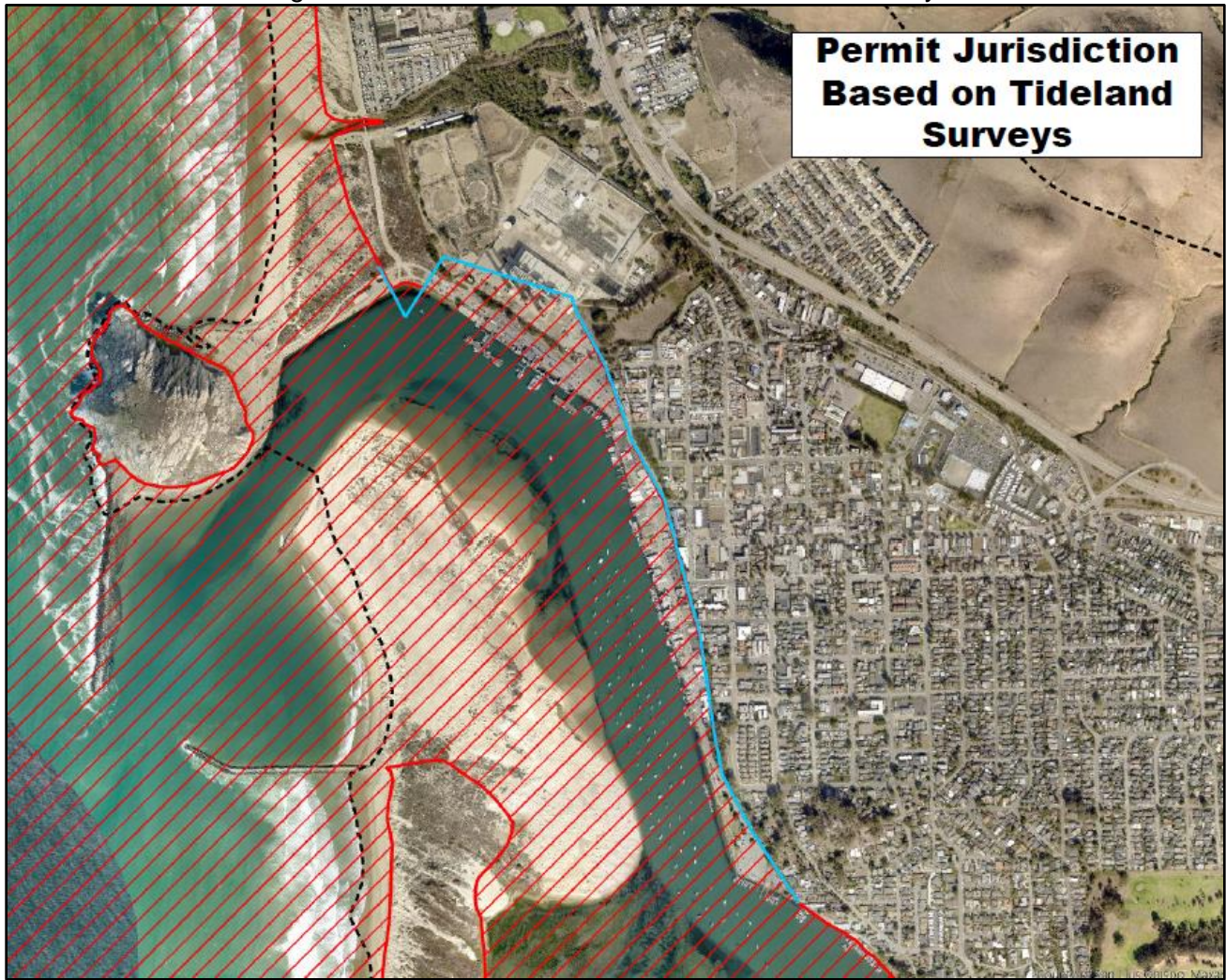
Since the certification of the City's LCP, permitting authority for projects along the coast and Embarcadero have been determined by this boundary. However, staff with the CCC's mapping division have recently uncovered the original tidelands survey for Morro Bay that predates the 1991 post certification maps. This tidelands survey shows that the COJ boundaries are in need of amendment in two locations within the City, such that it expands the permitting authority of the CCC. These original tideland surveys are shown in Figure 2 below, superimposed over a current aerial image of the bay.

Figure 2: Original Tideland Surveys



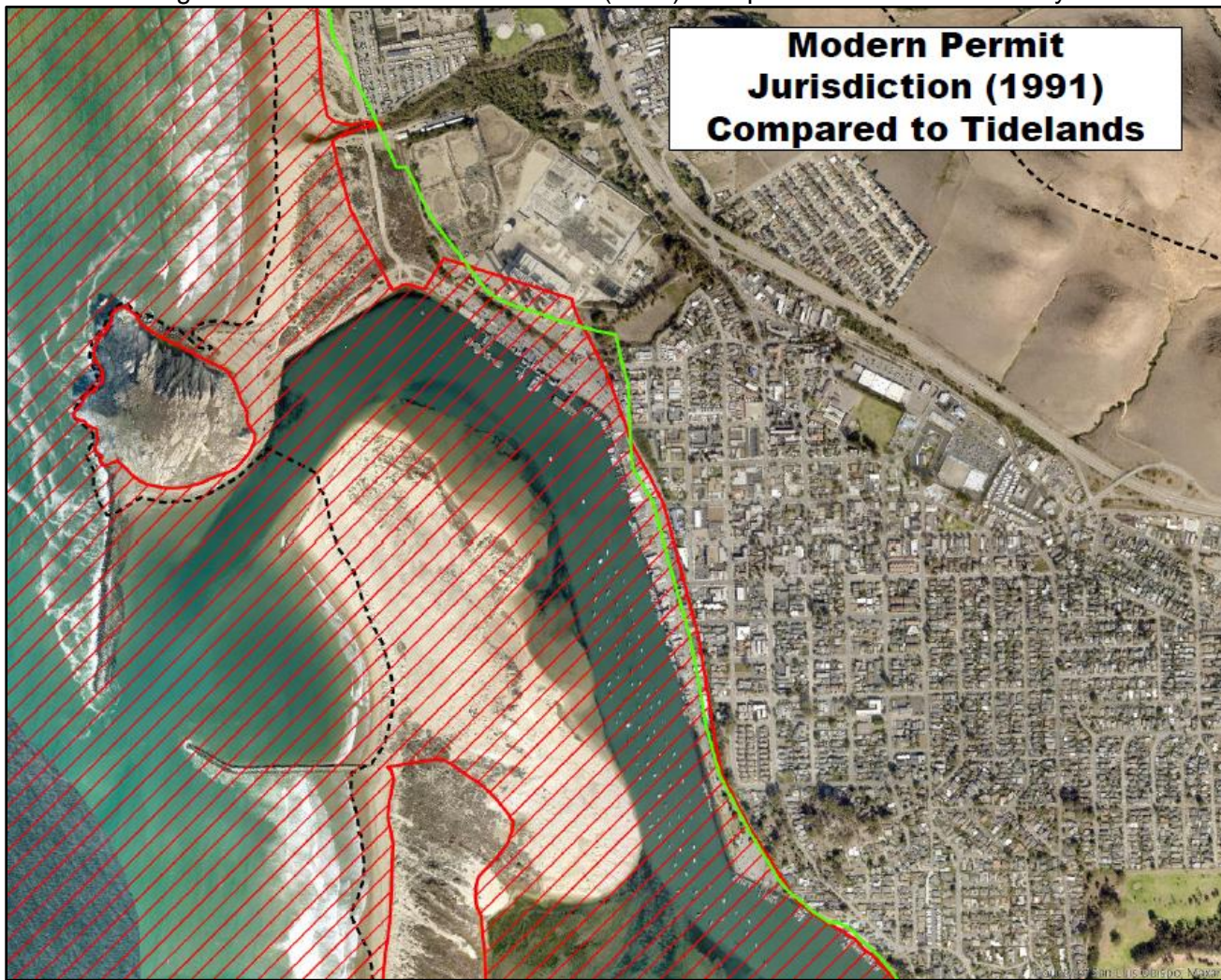
The original survey shows that the CCC, legally, should have retained additional permitting authority of several parcels along the Embarcadero, as well as co-jurisdiction with the City for permitting on the Morro Bay power plant property. This is illustrated in Figure 3 on the next page, and further clarified in Figure 4. In Figure 3, the area shown in red crosshatching represents land in which the CCC should be the permitting authority. Figure 4 maintains this crosshatched area and includes the green line indicating where the boundaries have been enforced since 1991, illustrating this newly apparent discrepancy.

Figure 3: Permit Jurisdiction Based on Tideland Surveys



Red crosshatching indicates where the CCC's permitting authority should be retained according to the original Tideland Surveys. The light blue line indicates areas in which this boundary differs from the 1991 post certification maps.

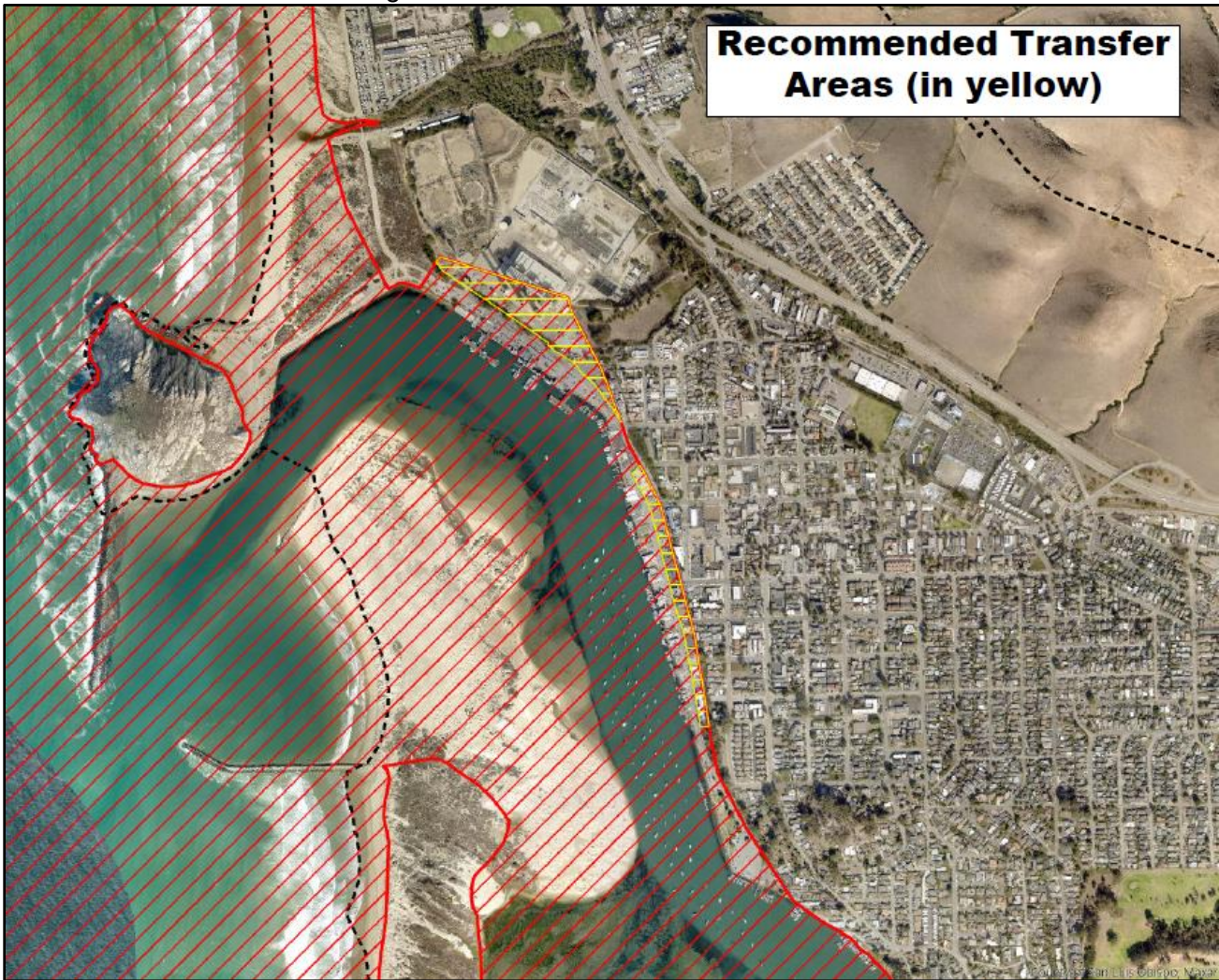
Figure 4: Modern Permit Jurisdiction (1991) Compared to Tideland Survey



The red crosshatching remains over areas in which the CCC should retain its permitting jurisdiction, shown this time with a green line that represents the boundaries of the 1991 post certification maps. This more clearly illustrates areas that are impacted by this change in jurisdiction.

As illustrated by Figures 3 and 4, the CCC should retain permitting authority over properties along the eastern side of the Embarcadero, and have joint authority with the City on the power plant property. However, thanks to legislation that became effective in 1982 the CCC has the ability to delegate its original permit authority over potential public trust lands to local governments under certain circumstances. This legislation, Coastal Act Section 30613, allows the CCC, after consultation with the California State Lands Commission (CSLC), to delegate such areas provided they are determined to be (1) filled and developed, and (2) are located within an area which is committed to urban uses. The CCC is recommending that the City initiate a request through Coastal Act Section 30613 (Section 30613) to receive, by transfer, permitting authority over these areas. These potential transfer areas are marked by yellow crosshatching in Figure 5 on the following page.

Figure 5: Recommended Transfer Areas



To summarize, CCC staff have recently discovered original tideland surveys that would expand their permitting jurisdiction in Morro Bay. Rather than do this, however, CCC staff have expressed a desire to process a transfer of jurisdiction to the City for the areas shown in yellow crosshatching in Figure 5 above. The characteristics of these areas and how they meet transfer criteria under Section 30613 will be discussed in the following section.

Analysis

The transfer areas are separated into two parts by CCC staff, and will be discussed separately in this report. The first area is called the Morro Bay Power Plant/Triangle Lot (Power Plant property, for simplicity), and the second is labelled as Embarcadero – Inland (East Embarcadero).

Power Plant Property

The Power Plant property contains three address points (1200, 1210, and 1290 Embarcadero) and three APNs (066-331-046, 066-331-041, and 066-031-002). The jurisdictional transfer for this area

includes 10.83 acres. Development on the site includes the decommissioned Morro Bay power plant stacks and associated infrastructure. This area also includes a City-owned boat yard and parking lot, and the Maritime Museum. Figure 6 below provides a closer look at the area and its surrounding uses.

Figure 6: Close Up View of Power Plant Property



Per Section 30613 of the Coastal Act, the CCC can, after consultation with the California State Lands Commission (CSLC), transfer lands which may be subject to the public trust if they are determined to be (1) filled and developed and are (2) located within an area which is committed to urban uses. Coastal Commission staff have made findings for each of these conditions, which have been summarized and presented below.

Filled and Developed

The US Navy began construction of Morro Bay's harbor in the early 1940s. This included dredging sand from the estuary to create new land on the eastern side of the estuary, which now includes the subject properties (Power Plant property) and the Embarcadero.

The site was first used as a Navy training base through 1945. In the early 1950s, the Morro Bay Power Plant was constructed and operated until it was officially decommissioned in 2014. The stacks and power plant building remain in place today. The City's certified Local Coastal Plan (LCP) classifies the boat yard and the Maritime Museum as Public Facility and the Front Street parking lot as Visitor Serving Commercial. Both land use designations reflect the current land uses of these properties. The power plant portion of the subject properties, however, is designated Visitor Serving Commercial, which does not reflect the current land use of that site. The City's LCP requires the

certification of a master plan prior to the processing of a Coastal Development Permit (CDP) for associated development at the power plant site.

Committed to Urban Uses

The subject properties are located in an area that has been committed to urban uses since the fill and development of the power plant property area and the Embarcadero by the US Navy in the 1940s. The predominate land uses in the surrounding area are Visitor Serving Commercial with a floor area ration (FAR) of 1.25 and Commercial/Recreational Fishing with an FAR of 0.5.

City Staff Discussion

Community Development staff agree with the CCC staff that the power plant properties in question meet the criteria of Coastal Act Section 30613 and are eligible for jurisdictional transfer. Should the City Council grant the Director with the ability to request the transfer, the historic tidelands will be officially recognized and potential jurisdictional problems in the permitting process will be avoided. Under the historic tidelands and without the transfer, a future development on the subject properties would require two CDPs to be processed— one by Coastal staff and another by City staff. This would create a confusing and potentially contradictory process for an applicant, leading to an uncertain outcome for the public. The City could elect to have Coastal Commission be the only permitting authority on a project as the superior agency, which would diminish the City's influence over the process. Allowing the Director to request the transfer of this area will alleviate these constraints and give the City the most control over future development. It is important to note, however, that in the transfer scenario the CCC would retain appeal authority over permits on the site. City staff recommend that Council authorize the Director to request a transfer of the Power Plant property. This would also transfer CDP jurisdiction of the triangle parking lot and boat storage yard from the CCC to the City.

Embarcadero East

The Embarcadero East transfer area (or, Embarcadero – Inland) spans from 456 to 988 Embarcadero. In between Dune and South Streets, this area includes 19 APNs (15 parcels) and consists of visitor serving uses such as shops, restaurants, public parking lots, and hotels for a total of 4.85 acres. A closer look at this area is provided on the next page in the form of Figure 7.

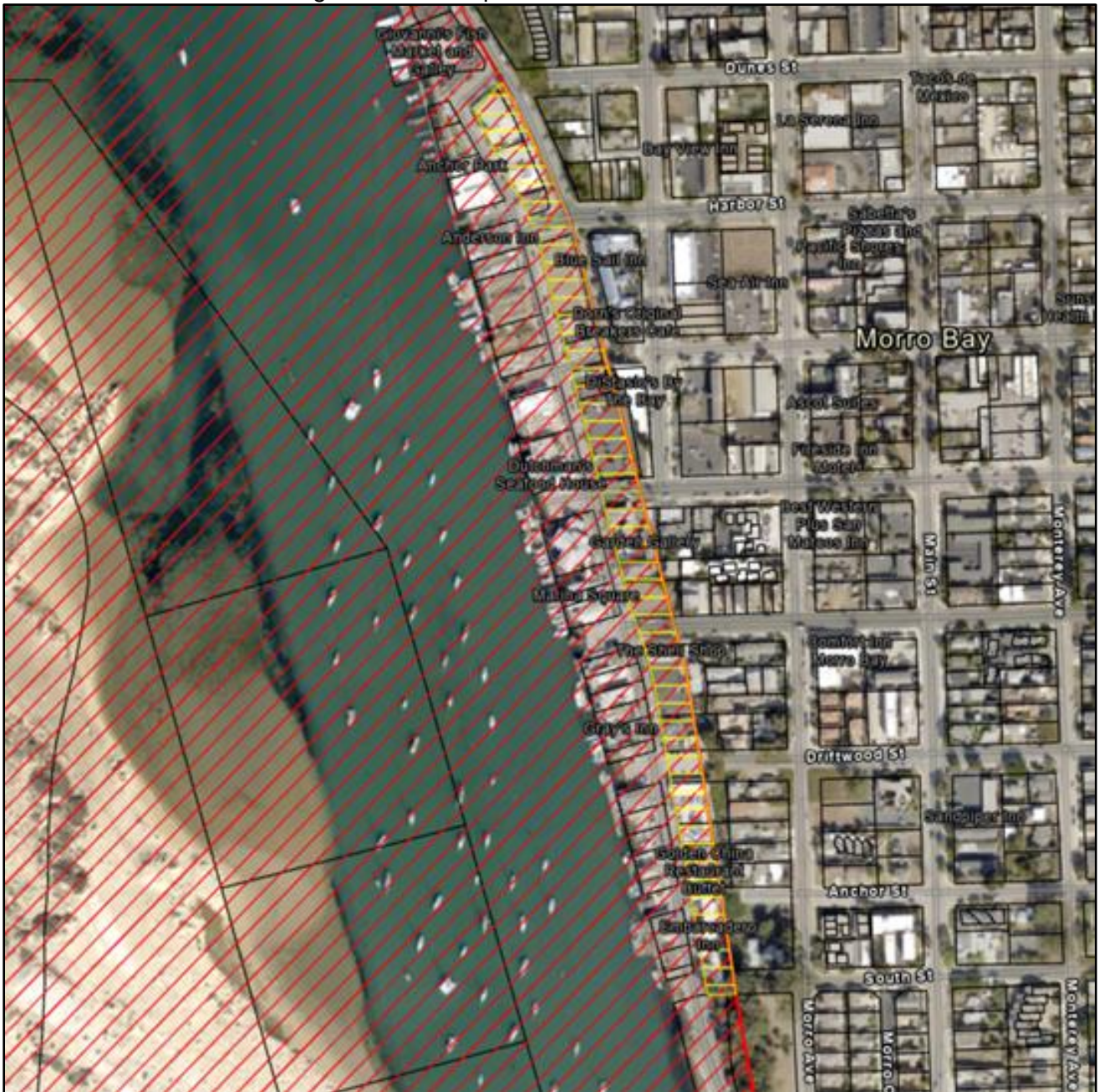
Per Section 30613 of the Coastal Act, the Coastal Commission can, after consultation with the California State Lands Commission (CSLC), transfer lands which may be subject to the public trust if they are determined to be (1) filled and developed and are (2) located within an area which is committed to urban uses. Just as with the Power Plant property, Coastal Commission staff have made findings for each of these conditions, which have been summarized and presented in the following sections.

Filled and Developed

The US Navy began construction of the harbor in the early 1940s, which included the dredging of sand from the estuary to create new land on the eastern side of the estuary. This filled land includes the low-lying lands spanning from the bayfront to the foot of the bluff inland of the Embarcadero.

The Embarcadero East properties are subdivided into 15 parcels that are almost entirely improved with structures and/or some form of hardscape to support visitor serving uses in the area, with the exception of two vacant lots (APN 066-321-004 and 066-301-041). The parcels are served by roads and utilities and most of the development on the inland side of the Embarcadero has existed since approximately the 1960s.

Figure 7: Close Up View of Embarcadero East



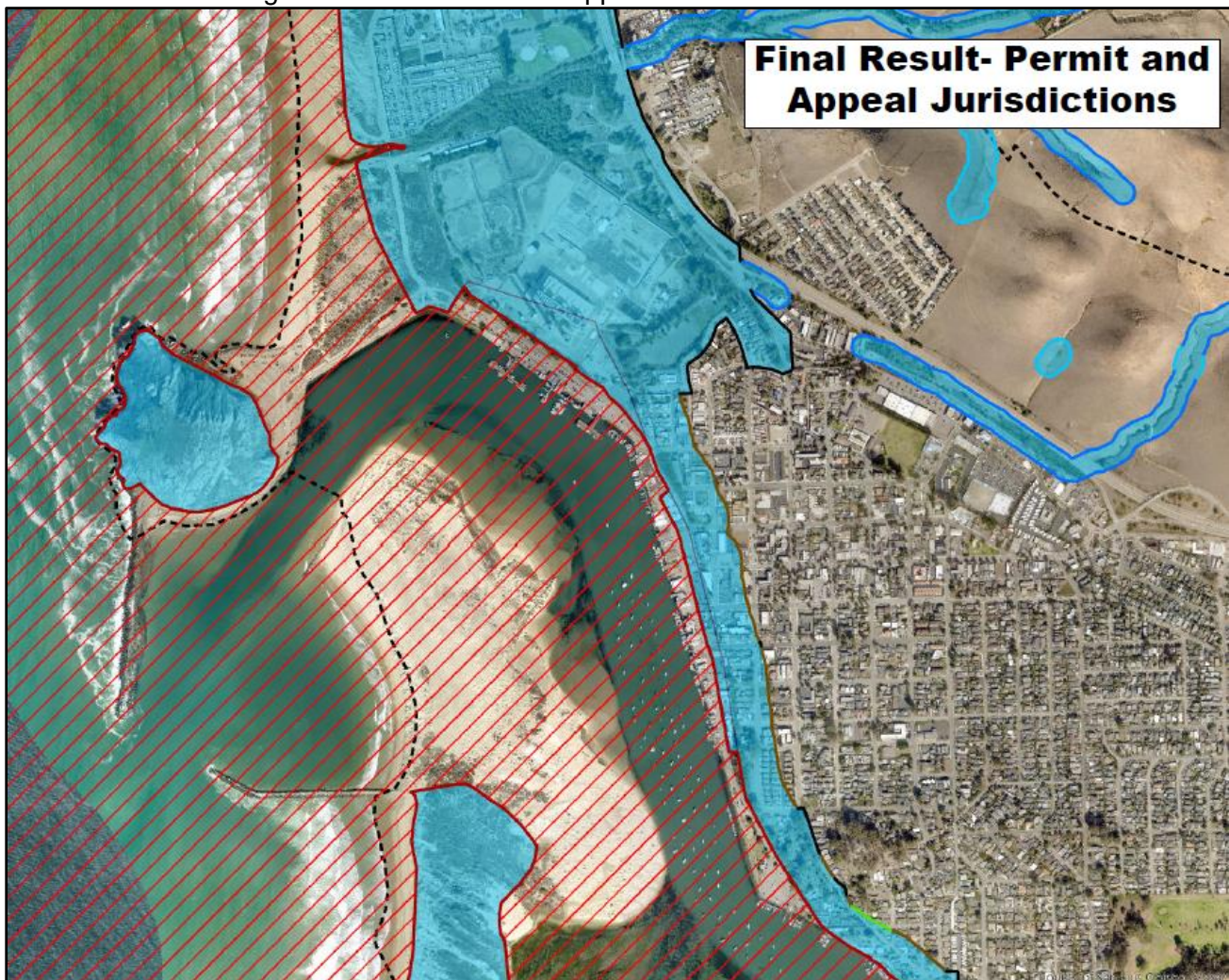
Committed to Urban Uses

The Embarcadero East properties are located in an area that has been committed to urban uses since the fill and development of the power plant property and the Embarcadero in the 1940s. The predominate land uses in the surrounding area are Visitor Serving Commercial with an FAR of 1.25 and Waterfront Commercial/Industrial with an FAR or 1.25.

City Staff Discussion

Community Development staff agree with the CCC that the Embarcadero East (or, Embarcadero – Inland) properties in question meet the criteria of Coastal Act Section 30613 and are eligible for jurisdictional transfer. Further, the transfer of these properties under Section 30613 would preserve the City’s permitting authority along the eastern edge of the Embarcadero. In other words, the transfer of these properties to the City represents the scenario of no change from the current permitting authority today. Not enabling the transfer of this area would lead to a loss in the City’s authority over land use decisions along the Embarcadero. As with the Power Plant property, it is important to note that the CCC would retain appeal authority over permits on the Embarcadero East properties. A map of the final permit and appeals jurisdictions after the recommended transfer is included below as Figure 8 for clarity. City staff recommend that the Council authorize the Director to request a transfer of the Embarcadero East properties.

Figure 8: Final Permit and Appeal Jurisdictions After Transfer



Red crosshatching represents the Coastal Commission’s permit authority after the proposed transfer, while the blue highlighted areas represent the Commission’s appeal jurisdiction.

Figure 9: Final Permit Jurisdiction Compared to 1991



CONCLUSION

CCC staff recently discovered a Morro Bay tidelands survey that changed the CCC's understanding of the historic tideland areas before they were filled in by the U.S. Navy.

According to this survey, the Coastal Commission's retained jurisdiction (also known as "Coastal Original Jurisdiction" or "COJ") was expanded to include more of the power plant property, certain areas on the east side of the Embarcadero, and the triangle parking lot and boat storage areas.

CCC staff has requested that the City initiate a process under Section 30613 of the Coastal Act to transfer jurisdiction in these areas from the CCC to the City.

If authorized by the Council and approved by the CCC, this jurisdiction transfer would increase local control of land use and development on the Embarcadero, particularly for the power plant property

and triangle parking lot and boat storage. This would also result in a more efficient and cohesive permitting process for future development on the power plant property, as the City would be the one to process the CDP for any future development.

For the identified areas east of the Embarcadero (456 to 988 Embarcadero), the change in jurisdiction would memorialize the City's current maps, which already grant the City jurisdiction to these filled tidelands.

For all jurisdictional transfer areas, the CCC would still have appeal jurisdiction over development.

ATTACHMENT(S)

1. City of Morro Bay – Jurisdiction Transfer Request Letter
2. City of Morro Bay – Post Certification Map Storyline