

CALIFORNIA COASTAL COMMISSION

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**August 2, 2024**

Airlin Singewald, Director
City of Morro Bay Community Development Department
955 Shasta Avenue
Morro Bay, California 93442

Subject: Morro Bay Battery Energy Storage System

Dear Mr. Singewald:

As you know, there are a number of questions and issues swirling around regarding the proposed Battery Energy Storage System (“BESS”) project in the City of Morro Bay, including related to the Coastal Commission’s role related to potential City Local Coastal Program (LCP) changes and City/Commission coastal development permits (CDPs). This letter seeks to provide clarity on our understanding of the LCP and permitting processes for the BESS project, including in relation to Assembly Bill (AB) 205, the City’s local A-24 ballot measure, and Coastal Act/LCP/CDP requirements.

Current CDP Application and LCP Amendment Efforts

As you know, the project applicant, Morro Bay Power Company LLC, is seeking to develop a battery energy storage facility (again, the BESS) on the former power plant site in the City. Under the LCP, the existing land use designation for the site is Visitor-Serving Commercial (and Commercial/Recreational Fishing, but not where the BESS is proposed), which means the BESS is currently not an allowed use. Thus, an LCP amendment would be required in order to allow for approval of a CDP application for such a project on allowable use issues alone. In addition, the LCP also requires preparation of a Master Plan for the site that would be certified as part of the LCP Land Use Plan (LUP) prior to processing any CDP applications for development on the site (see LUP Policy LU-5.4). Per that policy, the intent of the Master Plan effort is to identify the appropriate kinds, locations, and intensities of uses on the roughly 70-acre site, including based on a community process, and a Coastal Commission process to certify a final Master Plan as part of the LCP LUP, all of which would be a precursor to the applicant pursuing such development through a CDP application. At a minimum, the applicant’s pursuit of a CDP application for the BESS would require that the certified Master Plan allow for the use in question. In any case, and also at a minimum, we would expect any approvable Master Plan to identify potential allowable uses (e.g., visitor-serving commercial, recreational, open space, housing, industrial, etc.) and applicable resource protection provisions (e.g., avoiding sensitive habitats, coastal hazards, etc.) for the overall site, where preferably that is done with as much detail as possible so as to be most instructive for future CDP applications.

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As we understand it, the City is currently processing both the applicant's CDP application and a proposed Master Plan for the site. As part of that effort, the City determined that the proposed project (where, for this CEQA purpose, the City lumped both the Master Plan and the CDP for development of the battery storage facility into a singular 'project') requires preparation of an Environmental Impact Report (EIR) under CEQA, where the City has already prepared a Draft EIR (DEIR), and would need to certify a final EIR as a precursor to City approval of any version of the Master Plan. After City approval of a Master Plan, that Plan would then need to be submitted to the Commission to be incorporated into the LCP via an LUP amendment where the Coastal Act would serve as the standard of review for such amendment. Thus, it is our understanding that given the applicant's current CDP application with the City, an LCP amendment for the required Master Plan must be certified by the Commission prior to any local decision on the CDP, as the Master Plan would dictate the allowable development parameters for the site under the LCP. In addition, we note that any subsequent CDP approval by the City would be appealable to the Coastal Commission.

Measure A-24

At the same time that that Master Plan process is underway, we also understand that Measure A-24 will be on the City's November 2024 general election ballot. If passed, the ballot measure would require City-voters to vote to approve any changes to the existing land use designations applicable to the site, where it also would require submission of an LCP amendment specifying as much to the Commission. Thus, the current Master Plan LCP amendment effort and the potential ballot measure LCP amendment requirement appear likely to intersect one another if Measure A-24 passes in November, which is likely to require some coordination on our parts if that is the case to understand the overlaps, and how best to process LCP amendment(s) pertaining thereto.

AB 205

Separately, questions have been raised regarding whether the BESS project applicant could use the process envisioned by AB 205 as an alternative means of obtaining approvals for the project through the California Energy Commission (CEC), and thus circumvent the process described above. We have reviewed the law associated with AB 205, and it appears clear that the process envisioned there would render the above process moot as it relates to City-specific efforts, but it would still require certain Coastal Commission processes to remain in effect. Specifically, in terms of CEQA, this alternate route would require the CEC to prepare an EIR (see Government Code Section 25545.4). CEC staff would then prepare a recommendation for the CEC's consideration at a publicly noticed meeting on whether to certify the EIR and issue a certificate for the site and related facilities (see Government Code Section 25545.6).¹ However, an application under AB 205 would not supersede the authority of the Coastal Commission

¹ See, Public Resources Code Section 25500 which gives the CEC the authority to certify power facility sites and related facilities in the State. According to the CEC's website, the terms license, certificate, and permit are used interchangeably in applicable law (<https://www.energy.ca.gov/programs-and-topics/topics/power-plants/power-plant-licensing>).

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under the Coastal Act (see Government Code Section 25545.1(b)(2)). Thus, if the applicant chooses to apply for authorization for the BESS project under the auspices of AB 205, the project would require an approval from the CEC and also approval (of a CDP) from the Coastal Commission, where the standard of review for the CDP would be the Coastal Act with the LCP providing non-binding guidance (see Government Code 25545.5 (d)(1)). In such reviews within areas with certified LCPs when the Coastal Act is the standard of review, the Commission has historically sought to find projects consistent with underlying LCP provisions as well, although this is not a legal requirement. Thus, it is possible that the Commission could approve a CDP for a project that is inconsistent with one or more LCP provisions, although it is difficult to predict the outcome of any such application at the current time. In any case, if the applicant decides to apply to the CEC for approval under the provisions of AB 205, both CEC and Coastal Commission approvals would be required in the ways described above.

Development Constraints

And finally, we have spent some time looking at the preliminary information that is available as it pertains to the site of the proposed BESS, and it has become clearer that there are likely significant development constraints to that – or other – development in that area, which we wanted to highlight for the purposes of full transparency here. Specifically, and as we noted in our May 28, 2024 letter on the DEIR, our staff ecologist, Dr. Rachel Pausch, has reviewed the relevant materials, including those available from the DEIR, and has determined that the proposed site for the BESS includes dune habitat, including habitat that supports special status species (such as Blochman’s leafy daisy (*Erigeron blochmaniae*)). While we are unable to conclude with certainty at this time without further site-specific information, based on our current understanding it is likely the BESS area in question constitutes environmentally sensitive habitat area, or ESHA, under the Coastal Act and LCP. In addition, areas that might not be ESHA appear to be within the areas where required buffers of at least 50 feet would need to be applied under the LCP (see LCP Policy C-1.5). Put another way, it appears that the BESS portion of the site is either ESHA or required ESHA buffer, and that, if confirmed, significantly limits what can be developed there. Specifically, if the ESHA analysis is confirmed, the proposed BESS project use is not allowable under the ESHA provisions of either the Coastal Act (Section 30240) or the LCP (LUP Policy C-1.2) because it is not a resource-dependent use (e.g., restoration, scientific study, low intensity interpretive recreation in some cases, etc.), and it would be expected to significantly disrupt and degrade ESHA habitat values. As such, and absent other relevant information to the contrary, any such non-resource dependent development, whether it’s battery storage or other such non-resource dependent development, can only be sited in non-ESHA areas and outside of required buffers at the site, where such areas appear to be limited to the existing more developed areas of the site (e.g., the former power plant building/stack area). All of this needs to be taken into consideration in the current and ongoing Master Plan effort.²

² In addition, although we have not been able to research the full history yet, it appears as though there may be some restoration/remediation requirements that still accrue here and that are associated with the former tank farm area of the site, including as may emanate from the Commission’s Federal Consistency

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In addition, we would also note that the proposed battery storage use at such an important opportunity site in the City also raises a host of other Coastal Act/LCP consistency issues, including as identified in our DEIR comment letter (not repeated verbatim here, but considered to be part of this letter by reference). In particular, coastal hazards concerns at the site are acute, including regarding the current and future impacts of flooding and sea level rise at the project site, and any proposed development would have to be able to be found safe from such hazards without reliance on shoreline armoring (see Coastal Act Section 30253 and LCP Policy PS-2.2), where we again note that the proposed BESS facility does not qualify for reliance on shoreline armoring since the proposed facility is neither an existing structure nor a coastal-dependent use/development under the applicable rules (see Coastal Act Section 30235 and LCP Policy PS-3.3). On that latter, a coastal-dependent use/development “requires a site on, or adjacent to, the sea to be able to function at all” (see Coastal Act Section 30101, LCP Policy LU-4.1 to LU-4.6, and LUP page 6-40 of the glossary section) and the BESS does not so qualify, including as it doesn’t require such sensitive shoreline siting, and can readily be sited at inland locations not near the coast.

Conclusion

In sum, it appears clear that there are two main options available to the City and the applicant: the LCP-envisioned Master Plan and CDP application process, and the AB 205 process that circumvents City processes, as described above (with a third potential permutation where the City continues to pursue the Master Plan/Measure A-24 (if passed) LCP amendments at the same time that the applicant pursues relief under AB 205). It also appears clear that the proposed BESS site is subject to significant coastal resource constraints that need to be carefully evaluated in any case, some of which at the current time appear to preclude such a use/development altogether under the Coastal Act and the LCP. We are available for consultation on all of these issues. And, no matter how this process unfolds, we continue to be a ready partner for the City as it navigates the various pathways and concerns as it pertains to the former power plant site, including related to LCP amendments, but also related to CDP applications, and in whatever context such amendments/CDPs find themselves in the future. Please feel free to contact me if you’d like to discuss these matters further.

Sincerely,

DocuSigned by:
Sarah MacGregor

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Sarah MacGregor
Coastal Planner
Central Coast District
California Coastal Commission

cc: John Rickenbach, City Consultant for BESS/Master Plan
Claudia Morrow, Morro Bay Power Company LLC (BESS Applicant)

actions related to the site. It is possible that such residual requirements too could be a constraint to development here as well.