Appendix A: Land Use Plan Implementation

This appendix presents the measures required for implementing the Land Use Plan update. First, the plan administration and development review process are summarized. Table D-1 summarizes Zoning Map Amendments consistent with the land use designations established in the Land Use Plan update. Table D-2 summarizes amendments needed for the Implementation Plan, including the City's subdivision and zoning ordinances. Finally, this appendix summarizes other applicable state and federal regulations that must be considered in implementation of this Land Use Plan.

Plan Administration

LOCAL COASTAL PROGRAM CERTIFICATION

Local Coastal Programs (LCPs) consist of Land Use Plans together with zoning codes, zoning maps, and any other implementation tools needed to assure that Coastal Act policies are properly carried out at the local level. After Coastal Commission certification, all programs are implemented by the local government.

An LCP may be submitted to the Coastal Commission all at once, or in two phases with the Land Use Plan submitted first and the implementing actions second, each of which may be separately certified. The Coastal Commission reviews the Land Use Plan for consistency with the coastal resource planning and management policies of the Coastal Act. Review of the Implementation Plan is focused on its conformance with and adequacy to carry out the provisions of the certified Land Use Plan. An LCP is not effectively certified by the Coastal Commission until all parts have been certified.

Coastal Commission Jurisdiction

Following certification, the Coastal Commission retains original permitting jurisdiction over public trust lands and tidelands, as well as permit appeals jurisdiction over developments approved between the sea and the first public road paralleling the sea; within 100 feet of any wetland, estuary, or stream; within 300 feet of a coastal bluff edge, and for any major public works project or major energy facility. Although the City is the primary coastal development permitting authority, the Coastal Commission often plays a pivotal role in the permitting process by providing input and oversight, particularly for projects within the appeals jurisdiction.

Amendments and Periodic Review

Any amendments to the Land Use Plan must be reviewed and certified by the Coastal Commission. An exception exists for minor amendments if the Coastal Commission's executive director determines that they are "de minimis," have no impact on coastal resources and main consistency with Coastal Act policies. The Coastal Commission also has the authority to periodically review certified LCPs to ensure that coastal resources are being effectively protected in conformance with State law.

DEVELOPMENT REVIEW PROCESS SUMMARY

Development review takes place as part of the coastal development permit process. Some developments may be subject to Environmental Review and/or Architectural, Landscape, and Site Plan Review approvals before a coastal development permit may be issued. Submission requirements, review procedures, and approval criteria are detailed in the Local Coastal Implementation Plan, which includes the Half Moon Bay Zoning Ordinance. The Community Development Director, Planning Commission, and/or City Council are responsible for action on development applications within the City's permitting jurisdiction and consider all findings of any required review processes in the decision.

Coastal Development Permits

A coastal development permit is required for any project that meets the definition of development pursuant to Coastal Act Section 30106. The administration of coastal development permits is established in the Implementation Plan (IP). The coastal development permit review process ensures that development complies with the Land Use Plan, the IP, growth management objectives, and the Coastal Act, and that the proposed development be provided with adequate services and infrastructure. Certain categories of development are exempt from coastal development permit requirements, such as repair and maintenance, agricultural harvesting, minor additions to existing structures, and replacement of structures destroyed by natural disaster. Other types of de minimis development projects that do not have potential for any coastal resource impacts, such as residential additions, accessory dwelling units, invasive plant removal, and minor habitat restoration projects without the use of motorized or mechanized equipment, may be granted a coastal development permit waiver. A public hearing is required on most discretionary action and on all actions appealable to the Coastal Commission. Approvals for relatively minor permits, such as for accessory dwelling units and additions to single-family homes, as well as permit exemptions and waivers are made by the Community Development Director. Appeals of the Community Development Director's decisions may be made to the Planning Commission. The majority of discretionary approvals are made by the Planning Commission; these decisions may be appealed to City Council, which would then make the final determination for projects located outside of the Coastal Commission appeals jurisdiction. Any decision made by the City within the Coastal Commission's appeals jurisdiction may be appealed to the Coastal Commission.

Master Plans

Specific plans and precise plans are master planning tools. They both establish zoning regulations for the affected property(ies), including land use, density and intensity, design guidelines, and all other development standards such as height, setbacks and build-to lines, lot coverage and floor area ratios, parking, landscaping, and open space.

Specific plans are defined under Government Code section 65451. In addition to land use and development standards, specific plans must also address infrastructure and financing. Specific plans are most appropriate for areas lacking infrastructure, with multiple ownerships, where significant grading would be necessary, or in cases where financing mechanisms and other complicated matters must be addressed.

Precise plans are not defined by State Government Code and can be structured to suit the needs of individual jurisdictions. To implement precise plans, a jurisdiction must adopt enabling language in its zoning ordinance. For Half Moon Bay, precise plans enabling language will be established in the IP to implement this Land Use Plan update. The precise plan enabling language will specify the guidelines and standards that must be included in precise plans; the process for adopting precise plans; and the process for permitting development within adopted precise plan areas. Precise plans are most appropriate for infill sites where infrastructure is already present.

Until such time as Coastal Commission certification of a specific plan or precise plan, the zoning map will generically identify areas with PD land use designations as "specific plan" or "precise plan" districts. Once certified, these planning areas will be zoned as the adopted master plan. Specific plans and precise plans may also be used as zoning overlays for defined areas such as Downtown or commercial corridors. In these cases, master plans serve to provide additional planning context and requirements that go above and beyond site specific zoning standards and do not change the base zoning.

Special Development Permits

A Special Development Permit is an entitlement that allows flexibility from the strict adherence to the zoning regulations for qualifying sites not located in a PD land use designation to encourage mixed-use, multi-family residential, and residential development affordable to lower income households. This permit type will be established in the IP to implement this Land Use Plan update and provide a vehicle for planned development within existing zoning districts. Sites within the Town Center or an area designated for multi-family development are eligible for this entitlement. In the IP, the Special Development Permit enabling language will allow for clustered development, condominiums, townhouses, and other forms of subdivisions that would not otherwise comply with zoning standards. The Special Development Permit will not allow for higher residential densities than the base zoning; however, it will allow for flexibility in setbacks, and other zoning standards while also establishing criteria for appropriate architectural solutions, building materials, landscaping, and sustainable development measures to ensure a high-quality living environment and compatible infill residential development within established neighborhoods.

Review for Coastal Resource Conservation

Coastal resource conservation policies are discussed in Chapter 6: Natural Resources, including those that define the conditions under which special environmental studies are required. The necessary elements of each study are detailed in the Implementation Plan.

CEQA Review

Any development deemed a non-categorically exempt "Project" by California Environmental Quality Act (CEQA) standards requires an environmental review to determine the extent of any environmental impacts and whether or not significant impacts can be avoided or lessened to a level of insignificance. Projects with significant environmental impacts that cannot be mitigated to a level of insignificance require an environmental impact report (EIR) prior to Planning Commission consideration of the development application and before any decision on discretionary approvals may take place. Projects with potentially significant environmental impacts that can be mitigated require a mitigated negative declaration. Where mitigation is required, the City must adopt a mitigation monitoring and reporting program for the project. Non-exempt projects that will not result in significant, adverse environmental effects require a Negative Declaration. Local review is concurrent with review by outside agencies to ensure opportunities for coordinated public and agency participation in the CEQA process. Local thresholds of significance will be established and updated pursuant to Land Use Plan policy.

Architectural, Landscape, and Site Plan Review

The architectural, landscape, and site plan approval process is intended to ensure that development projects comply with site specifications established in the Zoning Ordinance and that development of the city's neighborhoods and commercial areas proceeds in a harmonious fashion. The process is described in the Implementation Plan. Review criteria address such issues as the compatibility of building materials, colors, and textures with adjacent development; the compatibility of height, bulk, and design with the surrounding environment; the safety and convenience of access to the site; and the appropriateness of landscaping.

Review for Historic Resource Protection

The City's municipal code requires protection of historic structures as important cultural, visual, and visitor-serving resources in Half Moon Bay. Any alterations or demolition of designated historic structures triggers architectural review to ensure design compatibility and historic resource protection. The Historic Resources Preservation Ordinance establishes review criteria for designating, altering, or demolishing any historic resource as consistent with the Historic Preservation Act of 1966 and the state standards of the Secretary of the Interior. Historic resources make a significant contribution to the development context of Half Moon Bay, especially where resources are concentrated in the downtown area, and are primarily addressed in the Community Preservation Element of the General Plan.

Heritage Tree Ordinance

The city's "town forest" consists of notable tree stands and hedgerows along roadways and within habitat areas throughout the city; neighborhood trees on private property; trees included in landscaping for commercial development; expansive landscaped areas such as golf courses; and public trees including street trees and park trees. The Heritage Tree Ordinance is intended to preserve and protect the City's town forest to provide a range of scenic, biological, and hydrologic benefits. The ordinance requires property owners to maintain and preserve any heritage trees on their property and property frontage and requires planting replacement trees in the event that a tree needs to be removed.

Sign Permits

Sign permits are required for most new permanent signage and some temporary signage. Much of the City's signage supports coastal access and visitor-serving uses, promotes local businesses and historic structures, and improves traffic safety and wayfinding. Review criteria for sign permits is designed to ensure compatibility with community character and continuity of city streetscapes, promote economic sustainability and public safety, protect scenic and visual quality, and protect residents' constitutionally protected free speech rights. Signage is an important component of building and site design and is therefore acknowledged in the Land Use Plan, especially in the Scenic and Visual Resources and Coastal Access and Recreation chapters of the Land Use Plan.

Implementation Plan Updates

The following tables summarize updates necessary to bring the Implementation Plan into conformance with the 2020 LUP update. Table A-1 lists each land use map designation change brought forward with the 2020 Land Use Plan update and the associated amendments required for the Zoning Map, with sites listed from north to south. Table A-2 summarizes anticipated amendments for the Subdivision Ordinance and Zoning Ordinance based on new policies, programs, and land use designations established by the 2020 LUP update.

Table A-1: Zoning Map Amendments

Site	1985/96 Designation	2020 Designation	Anticipated Zoning
City Parks	Various	City Parks and Recreation	OS – A
Urban Reserve and Open Space Reserve land use designations	Urban Reserve and Open Space Reserve	Rural Coastal	R – C
Nerhan property above Nurserymen's	Open Space Reserve	Open Space for Conservation	OS – C
2001 Ruisseau Francais Ave	Residential – Low Density	Rural Coastal	R – C
Miramar Beach PD	PD	Residential – Medium Density	R – 2
Guerrero PD	PD	Open Space for Conservation Residential – Medium Density	OS – C R-1 B-1
Nurserymen's Exchange PD	Residential – Low Density	PD	PUD
Stoloski/Gonzalez PD	PD	Residential – Low Density	New low-density residential zoning district
City-SAM Bev Cunha's Country Road Properties	Public Facility, PD, and Urban Reserve	Open Space for Conservation	OS – C
Glencree	Residential – Medium Density	Open Space for Conservation Residential – Medium Density	OS – C R – 2
Beachwood	Residential – Medium Density	Open Space for Conservation	OS – C
Pacific Ridge Areas A and B	PD	Open Space for Conservation	OS – C
Pilarcitos West Urban Reserve PD	PD	Rural Coastal	R – C
250 San Mateo Road and "Goat Farm" parcels to the east – 6 parcels	Industrial	Mobile Home Park	MHP
151 Main Street and 2220 Cabrillo Hwy South	Public Facilities	Light Industrial	IND
Andreotti PD	PD	City Parks	OS – A

Site	1985/96 Designation	2020 Designation	Anticipated Zoning
		Residential – Medium Density Commercial – General Light Industrial Mobile Home Park	R – 2 C – G IND MHP
880 Stone Pine Road	Urban Reserve	Public Facilities and Institutions	P – S
737 Mill Street and adjacent parcel to the east	Residential – Medium Density	Commercial – General	C - R
740 Miramontes Street and 612, 640, and 642 Johnston Street	Residential – Medium Density	Commercial – General	C – R
901-1023 Miramontes Street	Open Space Reserve	Residential – Medium Density	R-1 B-2
555 Kelly and westerly strip and back portion of 515 Kelly Avenue	Commercial – General	Public Facilities and Institutions	P – S
Railroad right-of-way conservation easement between Kelly Avenue and Seymour Street	Residential – Medium Density	Open Space for Conservation	OS – C
Amesport Landing	Residential – High Density	Residential – High Density	R – 3
700 Monte Vista, 840 and 890 Main Street	Residential – Medium Density	Commercial – General	700 Monte Vista: C-R 840 and 890 Main: C – D
740 Purissima Street	Residential – High	Residential – High	R – 3
900, 926, and 940 Main Street; both sides of Poplar Street between Highway 1 and Main Street	Residential – Medium Density	Residential – High Density	R – 3
Main Street Park PD	PD	Residential – High Density	R – 3
L.C. Smith Estate PD	PD	Commercial – General	C – G
1167 Main Street (Theatre)	Public Facilities and Institutions	Commercial – General	C – G
1191 Main Street, Fire Station	Open Space Reserve	Public Facilities and Institutions	P – S
County-owned properties south of West of Railroad PD	Regional Public Recreation	Regional Public Recreation	OS – P
1430 Cabrillo Highway and 450 Wavecrest Road	Horticulture Business	Commercial – Visitor Serving	C – VS
Coastside Land Trust 50 Acres	PD	Open Space for Conservation	OS – C

Site	1985/96 Designation	2020 Designation	Anticipated Zoning
POST 80 Acres	PD	Rural Coastal	R – C
Smith Field Park	PD	City Parks	OS – A
Wavecrest Arroyo	PD	Open Space for Conservation	OS – C
29 acres bounded by Bernardo Avenue and horticultural business to the north, Highway 1 to the east, Redondo Beach Road to the south and Central Avenue and Occidental Avenue to the west	Residential – Medium Density and PD	Residential – Low Density Horticulture Business	New low-density residential zoning district A – 1
400 – 408 Redondo Beach Road	PD	Residential – Medium Density	R – 1 B – 2
Frontage of 2119 Cabrillo Highway South	Open Space Reserve	Horticulture Business	A – 1
2005 – 2265 Cabrillo Highway South	Open Space Reserve	Horticultural Business	A – 1
2251 Cabrillo Highway and 1602 Miramontes Point Road (4 parcels, 2.6 AC)	Open Space Reserve	Commercial – Visitor Serving	C – VS
South Wavecrest	PD	Commercial – Visitor Serving	C – VS

Table A-2: Subdivision and Zoning Ordinance Amendments

Subdivision Ordinance		
Topic	**Related LUP Policy**	**Anticipated Updates**
Lot Retirement	2-21	Regulations to implement lot retirement requirements
Lot Mergers	2-23	Regulations to implement lot merger requirements
Certificates of Compliance/Lot Legality Confirmation	2-21, 2-23	Procedures for confirming lot legality
Measure D	Policy 2-16 and 2-17	Update procedures to prioritize affordable and sustainable housing, Town Center development, and Workforce Housing Overlay units
Zoning Ordinance		
Topic	**Related LUP Policy**	**Scope/notes**
Zoning Code Definitions	Glossary	Update to conform with LUP
Precise Plans	Appendix A	Enabling language
Special Development Permits	Appendix A	Establish new entitlement process

General Plan initiation	2-10	Procedures for initiating amendments to the General Plan
CDP Waivers	2-11	Expedited processing for de minimus development projects
Minimum Densities	2-18	Establish minimum residential densities
Small lot infill	2-73	Update standards for substandard infill residential lots
ADUs	2-74	Update to comply with state law
Short term rentals	2-76	Establish regulations to protect residential living environment and coastal resources
Home Occupation	2-75	Establish performance standards for traffic, parking, noise, etc.
Coastal Resource Conservation Standards zoning ordinance	Chapter 6. Natural Resources, Chapter 7. Environmental Hazards	Update to conform with LUP
Visual Resources zoning ordinance	Chapter 9. Scenic and Visual Resources	Update to conform with LUP
Public Access zoning ordinance	Chapter 5. Coastal Access and Recreation	Update to conform with LUP
Planned Unit Development zoning district	2-41 through 2-65	Update to conform with LUP (permitted uses, master planning requirements, Dykstra Ranch zoning ordinance)
Rural Coastal zoning district	2-86 through 2-94	Establish new zoning district with use regulations and development standards
Agriculture zoning district	2-86 through 2-94	Establish new zoning district with use regulations and development standards
Workforce Housing Overlay	2-70, 2-94, 2-98, 2-104, 2-107	Establish new overlay district with affordability requirements, development standards, etc.
Public Services zoning district	2-110	Update development standards for land use compatibility
Industrial zoning district	2-82, 2-83, 2-84	Include live-work uses, update development standards for land use compatibility
Other updates/programs		
Topic	**Related LUP Policy**	**Scope/notes**
Right to Farm	4-15	Land use compatibility, disclosure requirements, implementation
Transfer of Development Rights	2-22	Establish TDR program
Town Center Planning	2-30	Use requirements, design standards, circulation and parking strategies

Federal and State Regulations

The following section summarizes other federal and state regulations related to implementation of the Coastal Act and this Land Use Plan, organized by related chapter.

CHAPTER 2: DEVELOPMENT

State Planning and Zoning Law: State law requires all local jurisdictions in California to adopt a general plan that provides comprehensive policy direction for the long-term physical development, preservation, and conservation of the jurisdiction. The General Plan must address at least seven elements: land use, housing, circulation, conservation, open space, noise, and safety. An environmental justice element or policies are also required when two or more elements are updated. Optional elements are also allowed. The State Office of Planning and Research provides General Plan Guidelines for local jurisdictions to use in periodic general plan updates. .

State Housing Laws: Numerous state laws impose requirements on local jurisdictions related to the development of housing. These laws include the Permit Streamlining Act, Housing Accountability Act, SB 35 (Streamline Housing Approvals), and the Housing Crisis Act of 2019. In general, the Housing Crisis Act prohibits local governments from reducing the density/intensity of residential development unless they adopt concurrent increases, subject to certain exceptions. SB 35 does not apply to development in the Coastal Zone. Other state housing laws clarify that they are not intended to override the requirements of CEQA or the Coastal Act. Some of these laws, including SB 330 which enacted the Housing Crisis Act of 2019, sunset on January 1, 2025.

CHAPTER 3: PUBLIC WORKS

U.S. Safe Drinking Water Act: Established in 1974, this act is the foundational federal law that ensures the quality of drinking water.

State Health and Safety Code: This code requires each public water system to have sufficient water available from its water sources and distribution reservoirs. The system must be shown as able to supply adequately, dependably, and safely the total requirements of all its users under maximum demand conditions before an agreement can be made to permit additional service connections to that system.

California Water Code: Broadly, this code requires water conservation throughout the state. It further establishes that it is wasteful to use potable water for purposes that can be served with reclaimed water when it is available.

Urban Water Management Plan Act: This act requires water suppliers to prepare and submit to the State Department of Water Resources (DWR) an Urban Water Management Plan (UWMP) every five years. The UWMP must document the quality of a supplier's available water source(s) and provide an assessment of the ways in which water quality affects its water management strategies and supply.

Water Conservation Act of 2009 (SB X7-7): This act requires urban retail water suppliers to set and achieve water use targets that will help the state achieve a 20 percent per capita urban water use reduction by 2020.

Water Conservation in Landscaping Act: This act requires local governments to require the use of low-flow plumbing fixtures and the installation of drought tolerant landscaping in new development.

Sustainable Groundwater Management Act (SGMA): Included in the California Water Code, this act requires the Department of Water Resources (DWR) to monitor and assess the status of groundwater basins throughout the state. Basins receiving a priority or high priority rating are required to establish a groundwater sustainability agency to prepare and implement a groundwater sustainability plan.

Clean Water Act: Sewage treatment systems and sewage collection systems in the United States are subject to this federal act and are regulated by federal and state environmental agencies including the State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Board (RWQCB). Local sewage plants typically receive discharge permits from state agencies or the Environmental Protection Agency (EPA). Treatment plants must ensure that wastewater does not contaminate the local potable water supply or violate any additional water quality standards.

U.S. Safe Drinking Water Act: Large-capacity septic systems are regulated under the EPA's Safe Drinking Water Act Underground Injection Well program.

California Ocean Plan: SWRCB is responsible for implementation of the California Ocean Plan, originally adopted in 1972 and most recently updated in 2015. A 2013 amendment to the plan addressed wastewater outfalls to the ocean, including a prohibition of new outfalls in State Water Quality Protection Areas which include state-designated Areas of Special Biological Significance and Marine Protected Areas. The nine statewide RWQCBs support this Plan and its regulations through review and approval of National Pollutant Discharge Elimination System (NPDES) permits. Permits contain specific requirements that limit pollutant loads and discharge locations.

Clean Water Act: The federal Clean Water Act regulates discharges of dredged or fill material in the Waters of the United States (sections 401 and 404). In 1972, the Act was amended to provide that the discharge of pollutants to waters of the United States from any point source is unlawful unless the discharge is in compliance with a National Pollutant Discharge Elimination System (NPDES) Permit. Additional regulatory context pertaining to the Clean Water Act is provided in Chapter 6. Natural Resources.

Porter-Cologne Water Quality Control Act: The California State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Board (RWQCB) share the responsibility under the Porter-Cologne Act to formulate and adopt water policies and plans, and to adopt and implement measures to fulfill Clean Water Act requirements. State policy for water quality control in California is directed toward achieving the highest water quality consistent with maximum benefit to the people of the State. Therefore, all water resources must be protected from pollution and nuisance that may occur from waste discharges or

damaging extractions. Beneficial uses of surface waters, ground waters, marshes, and mud flats serve as a basis for establishing water quality standards and discharge prohibitions to attain this goal. The goals of this act compliment Coastal Act Section 30231 by ensuring water quality protection both for biological productivity and human consumption.

Federal Emergency Management Agency (FEMA): FEMA is responsible for management of floodplain areas defined as the lowland and relatively flat areas adjoining inland and coastal waters subject to a 1 percent or greater chance of flooding in any given year (the 100-year floodplain). Under Executive Order 11988, FEMA requires that local governments covered by the federal flood insurance program pass and enforce a floodplain management ordinance that specifies minimum requirements for any construction within the 100-year floodplain. Flood insurance rate maps (FIRM) present the various risk areas.

California Department of Transportation (Caltrans): Caltrans has authority over the State highway system, including mainline facilities, interchanges, and arterial State routes. Caltrans approves the planning and design of improvements for all State controlled facilities.

Metropolitan Transportation Commission (MTC): MTC is the regional transportation planning agency for the nine-county Bay Area and is the authorized clearinghouse for State and federal transportation improvement funds. Funded projects are included in the Regional Transportation Plan (RTP) prepared by MTC.

San Mateo City/County Association of Governments (C/CAG): C/CAG is the Congestion Management Agency (CMA) for San Mateo County authorized to set State and federal funding priorities for improvements affecting the San Mateo County Congestion Management Program (CMP) roadway system.

San Mateo County Transit District (SamTrans): SamTrans is the primary public transportation provider in San Mateo County. SamTrans manages local and regional bus services, paratransit services, and the Caltrain commuter rail.

CHAPTER 6: NATURAL RESOURCES

Clean Water Act – Section 401/Porter-Cologne Water Quality Act: Pursuant to Section 401 of the Federal Clean Water Act, projects that require a Corps permit for the discharge of dredge or fill material must obtain water quality certification that confirms a project complies with state water quality standards before the Corps permit is valid. State water quality is regulated by the State Water Resources Control Board and the nine Regional Water Quality Control Boards. The state also maintains independent regulatory authority over the placement of waste, including fill, into waters of the State under the Porter-Cologne Act.

The California State Water Resource Control Board has developed a general construction storm water permit to implement the requirements for the federal National Pollution Discharge Elimination System (NPDES) permit. The permit requires submittal of a Notice of Intent to comply, fees, and the implementation of a Storm Water Pollution Prevention Plan.

Clean Water Act-Section 404: The U.S. Army Corps of Engineers (Corps) regulates discharges of dredged or fill material into Waters of the United States under Section 404 of

the Clean Water Act (CWA). "Discharge of fill material" is defined as the addition of fill material into Waters of the U.S., including but not limited to the following: placement of fill that is necessary for the construction of any structure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; and fill for intake and outfall pipes and sub-aqueous utility lines (33 C.F.R. §328.2(f)). In addition, Section 401 of the CWA (33 U.S.C. 1341) requires any applicant for a federal license or permit to conduct any activity that may result in a discharge of a pollutant into Waters of the United States to obtain a certification that the discharge will comply with the applicable effluent limitations and state water quality standards.

The Corps and the U.S. Environmental Protection Agency (US EPA) are responsible for implementing the Section 404 program. Section 404(a) authorizes the Corps to issue permits, after notice and opportunity for comment, for discharges of dredged or fill material into waters of United States. Section 404(b) requires that the Corps issue permits in compliance with US EPA guidelines, which are known as the Section 404(b)(1) Guidelines. Specifically, the Section 404(b)(1) guidelines require that the Corps only authorize the "least environmentally damaging practicable alternative" (LEDPA) and include all practicable measures to avoid and minimize impacts to the aquatic ecosystem. The guidelines also prohibit discharges that would cause significant degradation of the aquatic environment or violate state water quality standards (i.e. Porter-Cologne Water Quality Act).

Waters of the U.S. include a range of wet environments such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, and wet meadows. Wetlands are defined as "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions" (33 C.F.R. §328.3(b)). This is known as a "three-parameter" definition, as it requires the presence of three wetland indicators (hydrophytic vegetation, hydric soils, or saturated substrate) in order to positively identify and delineate a wetland area.

Furthermore, Jurisdictional Waters of the U.S. can be defined by exhibiting a defined bed and bank and ordinary high-water mark (OHWM). The OHWM is defined by the Corps as "that line on shore established by the fluctuations of water and indicated by physical character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas" (33 C.F.R. §328.3(e)).

Tidal waters are also under the jurisdiction of the Corps. The landward limits of jurisdiction in tidal waters extend to the high tide line "or, when adjacent non-tidal waters of the United States are present, to the limits of jurisdiction for such non-tidal waters" (33 C.F.R.§328.4(b)) High tide is further defined to include the line reached by spring high tides and other high tides that occur with periodic frequency (33 C.F.R.§328.3(d)).

Clean Water Act-NPDES Requirements: In 1972, the Clean Water Act was amended to provide that the discharge of pollutants to waters of the United States from any point source is unlawful unless the discharge is in compliance with a National Pollution Discharge Elimination System (NPDES) permit. The 1987 amendments established a framework for

regulating municipal, industrial, and construction-related storm water discharges under the NPDES Program. On November 16, 1990, the US EPA published final regulations that establish storm water permit application requirements for specified categories of industries. The regulations provide that discharges of storm water from construction projects that encompass one or more acres of soil disturbance are effectively prohibited unless the discharge is in compliance with an NPDES Permit. The California State Water Resources Control Board has developed a general construction storm water permit to implement this requirement.

Federal Endangered Species Act: The United States Congress passed the Federal Endangered Species Act (FESA) in 1973 to protect those species that are endangered or threatened with extinction. The FESA is intended to operate in conjunction with the National Environmental Policy Act (NEPA) to help protect the ecosystems upon which endangered and threatened species depend. The FESA establishes an official listing process for plants and animals considered to be in danger of extinction; requires development of specific plans of action for the recovery of listed species; and restricts activities perceived to harm or kill listed species or affect critical habitat (16 USC 1532, 1536).

The FESA prohibits the "take" of endangered or threatened wildlife species. "Take" is defined as harassing, harming (including significantly modifying or degrading habitat), pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting wildlife species, or any attempt to engage in such conduct (16 USC 1532, 50 CFR 17.3) Taking can result in civil or criminal penalties. Federal regulation 50 CFR 17.3 further defines the term harm in the take definition to mean any act that kills or injures a federally listed species, including significant habitat modification or degradation. Additionally, FESA prohibits the destruction or adverse modification of designated critical habitat. In the Service's regulations at 50 CFR 402.2, destruction or adverse modification is defined as a "direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.

The FESA also requires federal agencies to ensure that their actions do not jeopardize the continued existence of listed species or adversely modify critical habitat (16 USC 1536). Therefore, the FESA is invoked when the property contains a federally-listed threatened or endangered species that may be affected by a permit decision. In the event that listed species are involved and a Corps permit is required for impacts to jurisdictional waters, the Corps must initiate consultation with U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the FESA (16 USC 1536; 40 CFR § 402). If formal consultation is required, USFWS or NMFS will issue a biological opinion stating whether the permit action is likely to jeopardize the continued existence of the listed species, recommending reasonable and prudent measures to ensure the continued existence of the species, establishing terms and conditions under which the project may proceed, and authorizing incidental take of the species.

Magnuson-Stevens Fishery Conservation and Management Act: The Magnuson-Stevens Fishery Conservation and Management Act (MSFA) conserves and manages the fishery resources found off the coasts of the United States, the anadromous species, and the Continental Shelf fishery resources of the United States, including the conservation and

management of highly migratory species through the implementation and enforcement of international fishery agreements. The NMFS enforces the MSFA and regulates commercial and recreational fishing and the management of fisheries resources. The Sustainable Fisheries Act of 1996 amended the MSFA to include new fisheries conservation provisions by emphasizing the importance of fish habitat in regards to the overall productivity and sustainability of U.S. marine fisheries (Public Law 104-267). The revised MSFA mandates the identification and protection of Essential Fish Habitat (EFH) for managed species during the review of projects conducted under federal permits that have the potential to affect such habitat. Federal agencies are required to consult with NMFS on all actions or proposed actions authorized, funded, or undertaken by the agency, which may adversely affect EFH (MSFA 305.b.2).

Under the MSFA, NMFS identifies, conserves, and enhances EFH for those species regulated under a federal fisheries management plan (FMP). EFH is defined as those waters and substrates necessary to fish for spawning, breeding, feeding, or growth to maturity and includes all associated physical, chemical and biological properties of aquatic habitat that are used by fish. Projects that have the potential to adversely affect EFH must initiate consultation with NMFS. Adverse effects are any impacts that reduce the quality and/or quantity of EFH and can include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey or reduction in species fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions (50 CFR 600.810). There are four FMPs in California, Oregon, and Washington that identify EFH for groundfish, coastal pelagic species, Pacific salmon, and Pacific highly migratory fisheries.

Migratory Bird Treaty Act: The Migratory Bird Treaty Act implements international treaties devised to protect migratory birds and any of their parts, eggs, and nests from activities such as hunting, pursuing, capturing, killing, selling, and shipping, unless expressly authorized in the regulations or by permit. As authorized by the Migratory Bird Treaty Act, the USFWS issues permits to qualified applicants for the following types of activities: falconry, raptor propagation, scientific collecting, special purposes (rehabilitation, education, migratory game bird propagation, and salvage), take of depredating birds, taxidermy, and waterfowl sale and disposal. The regulations governing migratory bird permits are in 50 CFR part 13 General Permit Procedures and 50 CFR part 21 Migratory Bird Permits. On December 22, 2017, the U.S. Department of Interior's Office of the Solicitor issued Memorandum M-37050, which states an interpretation that the Migratory Bird Treaty Act does not prohibit the accidental or "incidental" taking or killing of migratory birds.

Fish and Wildlife Coordination Act: The USFWS also has responsibility for project review under the Fish and Wildlife Coordination Act. This statute requires that all federal agencies consult with USFWS, NMFS, and the state's wildlife agency (California Department of Fish and Wildlife, CDFW) for activities that affect, control, or modify streams and other water bodies. Under the authority of the Fish and Wildlife Coordination Act, USFWS, NMFS, and CDFW review applications for permits issued under Section 404 and provide comments to the Corps about potential environmental impacts.

Marine Mammal Protection Act: The Marine Mammal Protection Act (MMPA) was established by Congress in 1972 to prevent marine mammal species and population stocks

from declining beyond the point where they ceased to be significant functioning elements of the ecosystem of which they are a part. Three federal entities share responsibility for implementing the MMPA: NOAA Fisheries is responsible for the protection of whales, dolphins, porpoises, seals, and sea lions; USFWS is responsible for the protection of walrus, manatees, sea otters, and polar bear; and the Marine Mammal Commission provides independent oversight of domestic and international policies and actions of federal agencies addressing human impacts on marine mammals and their ecosystems. The MMPA establishes "take" prohibitions with certain exceptions and focuses on "optimum sustainable populations" to ensure healthy ecosystems.

California Endangered Species Act: The State of California enacted the California Endangered Species Act (CESA) in 1984. The CESA is similar to the FESA but pertains to state-listed endangered and threatened species. CESA requires state agencies to consult with the CDFW when preparing CEQA documents to ensure that the state lead agency actions do not jeopardize the existence of listed species. CESA directs agencies to consult with CDFW on projects or actions that could affect listed species, directs CDFW to determine whether jeopardy would occur, and allows CDFW to identify "reasonable and prudent alternatives" to the project consistent with conserving the species. Agencies can approve a project that affects a listed species if they determine that "overriding considerations" exist; however, the agencies are prohibited from approving projects that would result in the extinction of a listed species.

The CESA prohibits the taking of state-listed endangered or threatened plant and wildlife species. CDFW exercises authority over mitigation projects involving state-listed species, including those resulting from CEQA mitigation requirements. CDFW may authorize taking if an approved habitat management plan or management agreement that avoids or compensates for possible jeopardy is implemented. CDFW requires preparation of mitigation plans in accordance with published guidelines.

California Department of Fish and Wildlife Species of Special Concern: CDFW tracks species in California whose numbers, reproductive success, or habitat may be threatened. Even though not formally listed under FESA or CESA, such plant and wildlife species receive additional consideration during the CEQA process. Species that may be considered for review are included on a list of "Species of Special Concern" developed by the CDFW. CDFW has also designated special-status natural communities which are considered rare in the region, support special status species or otherwise receive some form of regulatory protection. Documentation pertaining to these communities, as well as special status species (including species of special concern), is kept by CDFW as part of the California Natural Diversity Data Base (CNDDB).

California Department of Fish and Wildlife-Streambed Alteration Agreement: Section 1602 of the California Fish and Game Code requires any person, governmental agency, or public utility proposing any activity that will divert or obstruct the natural flow or change the bed, channel or bank of any river, stream, or lake, or proposing to use any material from a streambed, to first notify CDFW of such proposed activity. CDFW may propose reasonable modifications, based on the information contained in the notification form and a possible field inspection. CDFW may propose reasonable modifications in the proposed construction to

provide for the protection of fish and wildlife resources. Upon request, the parties may meet to discuss the modifications. If the parties cannot agree and execute a Lake and Streambed Alteration Agreement, then the matter may be referred to arbitration.

California Department of Fish and Wildlife Fish and Game Code 3503 and 3503.5: The State of California has incorporated the protection of nongame birds and birds of prey, including their nests, in Sections 3800, 3513, 3503, and 3503.5 of the California Fish and Game (CFG) Code. Section 3503 of the Fish and Game Code makes it unlawful to take, possess, or needlessly destroy the nests or eggs of any bird. Section 3503.5 makes it unlawful to take or possess birds of prey (hawks, eagles, vultures, owls) or destroy their nests or eggs.

California Department of Fish and Wildlife Fully Protected Animal Species: The classification of Fully Protected was an effort by the State of California in the 1960's to identify and provide additional protection to those animals that were rare or faced possible extinction. Most Fully Protected species have also been listed as threatened or endangered species under state endangered species laws and regulations. Species classified as Fully Protected Species by the CDFW may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research and relocation of the bird species for the protection of livestock (as per California Fish and Game Code Section 3511(a)(1)).

CHAPTER 8: CULTURAL RESOURCES

National Historic Preservation Act: Significant archaeological and historic resources are protected by the National Historic Preservation Act (NHPA). The National Register of Historic Places (NRHP) is an inventory of the United States' cultural resources and is maintained by the National Park Service. The inventory includes buildings, structures, objects, sites, districts, and archeological resources meeting the following criteria as specified in the Code of Federal Regulations:

The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association and that:

(a) Are associated with events that have made a significant contribution to the broad patterns of our history; or

(b) Are associated with the lives of persons significant in our past; or

(c) Embody the distinctive characteristics of a type, period, or method of installation, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or,

(d) Have yielded, or may be likely to yield, information important in prehistory or history. (36 Code of Federal Regulations 60.4)

National Register resources may be rehabilitated pursuant to the Secretary of Interior's standards.

California Environmental Quality Act: The California Environmental Quality Act (CEQA) requires consideration of impacts on significant paleontological, historical, and archaeological resources. Significant or potentially significant impacts by projects on such resources are to be avoided or mitigated to less than significant levels. If the project may cause damage to a significant resource, the project may thus have a significant effect on the environment. Achieving CEQA compliance with regard to treatment of impacts to significant cultural resources requires that a mitigation plan be developed for the resource(s). Preservation in place is the preferred manner of mitigating impacts to archaeological resources.

Under CEQA, if an archeological site is not a historical resource but meets the definition of a "unique archeological resource," impacts to the resource should be avoided or fully mitigated. A unique archaeological resource is defined as follows:

An archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

(1) Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.

(2) Has a special and particular quality such as being the oldest of its type or the best available example of its type.

(3) Is directly associated with a scientifically recognized important prehistoric or historic event or person. (Public Resources Code, Section 21083.2)

State Legislation: State planning law requires cities and counties to consult with California Native American tribes during the local planning process for the purpose of protecting Traditional Tribal Cultural Places. Senate Bill (SB) 18 requires cities and counties to contact and consult with California Native American tribes prior to amending or adopting any general plan or specific plan, or designating land as open space. For purposes of consultation with tribes, the NAHC maintains a list of California Native American Tribes with whom local governments must consult. Assembly Bill 52 furthers SB 18 and provides for consideration of tribal cultural values. Tribal cultural values may include a site feature, place, cultural landscape, sacred place or object. The cultural value must be either on or eligible for the CAHR; or treated as a tribal cultural value pursuant to the discretion of the city or county.

In addition to SB 18 and AB 52, Governor Brown issued Executive Order B-10-11 in 2011 to reinforce communication and consultation with California Native American Tribes. Under this order, the California Natural Resources Agency (CNRA) adopted a Tribal Consultation Policy to govern and ensure effective communication and government-to-government consultation between Tribes and CNRA and its constituent departments that are under executive control.