

CALIFORNIA COASTAL COMMISSION

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W16b

ADDENDUM

September 7, 2021

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM W16b, Application No. A-5-LOB-20-0006 (Panattoni Development Company, Inc.) for the Commission meeting of September 8, 2021.**

I. Correspondence Received from the Appellant

Since the publication of the staff report on August 20, 2021, the Commission received one letter from the appellant (Citizens About Responsible Planning) and one letter from Rebecca Robles, Acjachemen Culture Keeper, and Chief Anthony Morales, Tribal Chair, Gabrieleno/Tongva San Gabriel Band of Mission Indians. The Commission was also forwarded a letter dated May 6, 2021 from Chief Anthony Morales, Tribal Chair, Gabrieleno/Tongva San Gabriel Band of Mission Indians, a letter dated March 5, 2020 from the Los Cerritos Wetlands Task Force, Los Angeles Chapter Sierra Club, and another letter dated March 5, 2020 from Rebecca Robles, Acjachemen Descendant, Tribal Contact as listed by the California Native American Heritage Commission. In addition, the applicant forwarded two letters of support for the project: one from October 8, 2019 from the Los Cerritos Wetlands Land Trust and one from August 22, 2019 from the Los Cerritos Wetlands Authority. The forwarded letters are included in the "Correspondence" tab for this item.

The letter from the appellant states that they are confused about the 30% open space requirement, and clarification is provided below in **Section II.j**. The appellant also requests that "Special Condition 3. Final Landscaping Plans" be renamed as "Special Condition 3. Final Plans for Vegetation on Open Space Areas," and **Section II.e** addresses this below. The appellant states that the project is "solar ready" and asks why it is not completely solar. Staff asked the applicant if they were willing to propose more than just "solar ready"

infrastructure, and the applicant responded that they are not willing to do so. The appellant also states that a full Environmental Impact Report should have been conducted for the project site, instead of a Mitigated Negative Declaration. In this case, the City is the lead agency for purposes of the California Environmental Quality Act (CEQA), and the Commission does not have authority over a lead agency's compliance with CEQA. The Commission should and does review the project for consistency with the relevant certified LCP policies. The appellant's other concerns raised in the letter are addressed in the staff report: truck access is addressed on pages 11-12 of the staff report; sea level rise concerns are addressed on pages 37-40 of the staff report; tribal and cultural concerns are addressed on pages 47-55 of the staff report.

The letter from Rebecca Robles, Acjachemen Culture Keeper, and Chief Anthony Morales, Tribal Chair, Gabrieleno/Tongva San Gabriel Band of Mission Indians states that they oppose the revised project (to incorporate a tribal access plan on the western project area) as inappropriate for and destructive of Puvungna, that Special Condition 15: Protection of Cultural Resources, does not consider existing law holding that Tribal Cultural Resources are not limited to subsurface remains of prior tribal occupation, but include historic and current tribal cultural areas and living ecosystems, as well, and that the Tribal Access Plan does not mitigate the erasure of a Sacred Site. The letter also states that such accommodations preferencing development over tribal human rights must be recognized as inherently racist and dehumanizing. The letter also states that "tribal access to Sacred Sites is recognized under State, Federal, and International laws as an inherent right of indigenous peoples, not something to be granted by public or private entities in exchange for destroying tribal lands." The letter concludes by reiterating that they are completely against the proposed development and believe that the project area has the potential to be restored to ESHA, including traditional tribal ceremonial and medicinal plants. Staff would note that, according to the NAHC website¹, the NAHC's Sacred Lands Inventory is a confidential catalog of Native American sacred and cultural sites on public and private lands and the NAHC is authorized in statute by Public Resources Code section 5097.94 (a), "to identify and catalog places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands..." The whole project area (eastern and western project areas) is private land, and there are no known graves or cemeteries on the site. To acknowledge the status of the area as part of the sacred land of Puvungna, the applicant has proposed, and the Commission has imposed as conditions, the donation of the western project area to LCWA to keep as open space and transitional wetlands and for tribal access. As noted on page 54 of the staff report dated August 20, 2021, the development on the eastern project area will result in direct impacts on Sacred Land and the development of the eastern project area may also have an indirect impact on the special nature of the Sacred Land being preserved on the western project area for tribal access. To mitigate for these impacts, Special Condition 15 requires the applicant to protect cultural resources during project grading and construction activities by submitting an Archeological Research Plan and an Archeological Monitoring and Mitigation Plan which includes a detailed plan for additional archeological research and testing to better characterize the potential for archeological resources on the site (both the eastern and western project areas) and Special Condition 16 requires the applicant to submit a Tribal Access Plan for the western project area written in collaboration with the Los Cerritos Wetlands Authority and the affected tribal governments.²

¹ <http://nahc.ca.gov/new-pages/environmental-and-cultural-department/>

² **Special Condition 15** and **16** have been slightly modified and the changes are reflected in this addendum, in Section II: subsections h, l, and m below.

II. Changes to Staff Report

This addendum modifies the staff report dated August 20, 2021 with the following corrections and modifications on pages 1, 3, 6, 9-10, 12, 14, 19, 25, 41, 43, 45, 54, 55, and 59. Language to be added to the staff report is shown in **bold underlined text** and language to be deleted is identified by ~~strikethrough~~.

a. On page 1 of the staff report, the project description shall be amended as follows:

Demolish 400 sq. ft. of concrete pipeline structures and asphalt paving and construct two, 35-ft. high industrial buildings (91,700 sq. ft. and 47,500 sq. ft.) with solar-ready building design and bird-safe glass with 211 on-site vehicular parking spaces and landscaping on 6.69 acres of land situated east of Studebaker Road; extend an off-site sewer line by roughly 1,000 linear ft., along the public right of way on Loynes Drive; weed and **temporarily irrigate** 1.81 acres of Open Space west of Studebaker Road and implement a planting plan; lot line adjustment on development parcels on the project site; and an offer to dedicate 1.81 acres of usable Open Space on the western project area to the Los Cerritos Wetlands Authority as native transitional habitat adjacent to the wetlands.

b. On page 3 of the staff report, the first full paragraph shall be modified as follows:

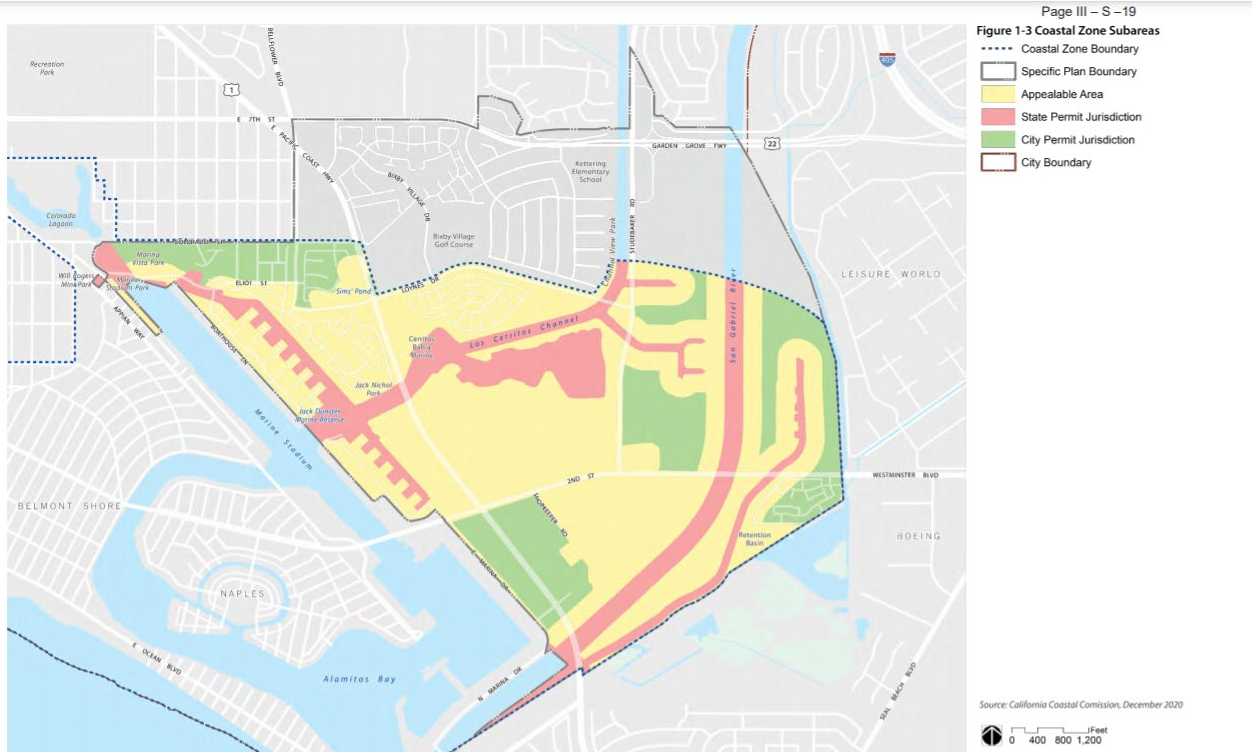
With regard to the appellants' concerns and Commission findings about the possibility of hazardous waste on the western project area and remediation responsibility, since the substantial issue hearing, the applicant has submitted a report from an environmental consultant which concludes that there are no indications of waste buried beneath the western project area, and if any were encountered, it would not be hazardous nor adversely impact the subsurface environment. **Special Condition 7** requires the applicant to submit, in writing for the review and approval of the Executive Director, a commitment to **that the applicant or owner of the eastern project area** be solely responsible for remediation of any land in the project area that may have hazardous waste or toxins present and that the remediation will take place **to the standards of the appropriate federal, state, and/or local agency with jurisdiction whenever it is needed,** ~~prior to donating the land to the Los Cerritos Wetlands Authority at the applicant's~~ **eastern project area owner's** expense.

c. On page 3, the second complete paragraph shall be modified as follows:

After the Commission's substantial issue hearing on March 13, 2020, further biological surveys were conducted by the applicant to determine if ESHA is present at the project site. Based on the applicant's biological surveys and as confirmed by the Commission's senior ecologist, the proposed project site is not in or directly adjacent to ESHA and does not exhibit the criteria of a wetland. The eastern project area, which was previously graded and developed as an industrial site, will be the site of the industrial buildings (with

some minor landscaping) and the western project area will be native transitional habitat, adjacent to the Los Cerritos Wetlands, that will be donated to the Los Cerritos Wetlands Authority (LCWA). **Special Condition 3** requires the applicant to submit a final **habitat and** landscaping plan with a LCWA-approved planting plan and palette for the western project area and a commitment to weed **and temporarily irrigate** the western project area **until native plants are established** for a three years. In addition, the presence of tall structures and glass surfaces in close proximity to the Los Cerritos Wetlands increases the risk of bird strikes and resulting impacts to avian populations, as the windows may reflect the sky or vegetation and create the appearance of open area. In order to reduce the chance of bird strikes, **Special Condition 4** requires the applicant to use bird-safe glazing for the building façade; and **Special Condition 6** requires measures to prevent impacts to bird nesting during construction.

- d. On page 6, the Exhibit 3 shall be replaced with the updated Appealable Map from SEASP:



- e. On pages 9-10 of the staff report, Special Condition 3 shall be modified as follows:

3. Final Habitat and Landscaping Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and written approval by the Executive Director, two (2) full-size sets of final **habitat and** landscaping plans for the western project area and the eastern project area prepared by a licensed landscape architect or a qualified resource specialist. A landscape architect or other qualified landscape professional shall certify in writing that the final landscape plans are in substantial conformance with the preliminary landscaping plans, dated February 24, 2021, except the final landscaping plans shall include the following:

- A. The Los Cerritos Wetlands Authority shall approve the final **habitat and** landscaping plans and plant palette, and such plan shall bear a note confirming the applicant's commitment to remove non-natives and implement three years of weeding for the western project area. In addition, the plan shall show **temporary** irrigation **for the purpose of establishing the native plantings** on the western project area and shall clearly state that the applicant will be responsible for **temporarily** irrigating this area **until the native plants become established. The applicant is responsible for the costs of installation, maintenance, and removal of the temporary irrigation once the LCWA has determined that the native plants have been established.** ~~until it is donated to the Los Cerritos Wetlands Authority (LCWA) when irrigation becomes the responsibility of the LCWA.~~

...

- f. On page 12 of the staff report, Special Condition 6 shall be modified as follows:

6. Construction During Bird Nesting Season.

A. Tree trimming and removal during bird nesting season (~~February~~ **January** 15 to September 15) is prohibited unless a threat to public health and safety exists. If tree trimming and removal cannot feasibly avoid the nesting season because a health and safety danger exists or because construction cannot be completed in the timeframe outside of nesting season, the following guidelines must be followed:

1. A qualified biologist or ornithologist shall conduct surveys and submit a report at least one week prior to the trimming or removal of a tree to detect any breeding or nesting behavior in or within 500 feet of the work area. The survey report shall be

submitted for the review and approval of the Executive Director of the Coastal Commission, the California Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, and the City of Long Beach.

2. Trees or branches with an active nest shall not be trimmed until a biologist or ornithologist has confirmed there are no active nests present, which may require construction to pause until the end of the subject nesting season.

B. For any other construction activities, between ~~February~~ January 15 and September 15, the permittee shall retain the services of a qualified biologist or ornithologist with experience in conducting bird behavior, nesting bird, and noise surveys to conduct said surveys in order to assess bird behavior, the presence nesting birds including, but not limited to, black-crowned night herons, great blue herons, great egrets, and snowy egrets, and to document ambient and project noise levels. The biologist or ornithologist shall also monitor project operations.

g. On page 14 of the staff report, Special Condition 7 shall be modified as follows:

7. Remediation Responsibility. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AND PRIOR TO TRANSFERRING THE WESTERN PROJECT AREA TO THE LOS CERRITOS WETLANDS, the applicant shall submit, for the review and written approval of the Executive Director, a written commitment to be fully responsible to remediate any land on the 1.81 acres of western project area if hazardous waste or toxins are encountered, ~~prior to transferring the western project area to the Los Cerritos Wetlands Authority.~~ The applicant shall indicate in writing that they, or the future owners of the eastern project area, are solely responsible for all costs associated with the remediation so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the eastern project area. The permittee or any future owners of the eastern project area shall be responsible for the remediation of the western project area, to the standards required by the appropriate federal, state and/or local agency with jurisdiction. Any actual remediation requires a coastal development permit or a coastal development amendment, in ~~addition to approval of plans by the Executive Director,~~ consultation with the affected Tribes, and the Los Cerritos Wetlands Authority.

h. On page 25 of the staff report, Special Condition 16 shall be modified as follows:

16. Tribal Access Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a Tribal Access Plan for the western project area written in collaboration with the Los Cerritos Wetlands Authority and the affected tribal governments (as described on the NAHC contact list), for the review and written approval of the Executive Director. In addition, the plan shall include methodology for testing for contamination as required by the appropriate federal, state and/or local

agency with jurisdiction and implementation of required testing will require a coastal development permit amendment or new permit. Any remediation required as a result of the testing will also require a coastal development permit amendment or new permit. The plan shall also lay out the key components of the Tribal Access Plan, including but not limited to, the names of Tribes that will have access to the area for religious and ceremonial gatherings, resource and material gathering, and other tribal gatherings, a description of the type and frequency of activities permitted on the site and a discussion of how these activities will be carried out in a manner that is protective of the native habitat and species, and a description of whether and how the area will be closed off to the public while Tribes are accessing the area for the described activities. The successors and assigns of the western project area shall maintain access in conformance with the approved Tribal Access Plan unless the Commission amends this permit or the Executive Director determines that no amendment is legally required.

- i. **On page 41 of the staff report, the second complete paragraph shall be modified as follows:**

The applicant states that the site conditions warrant that remediation is not necessary. Therefore, to ensure that the applicant is responsible for the remediation of any soil that may have hazardous waste or toxins in it (on the western or eastern project area) and in order to be consistent with Goal 3 of the Open Space and Recreation Element to provide for and maintain sufficient open space for adequate protection of lives and property against natural and man-made safety hazards, the open space (especially on the western project area) must be treated and maintained as usable, open space. Thus, **Special Condition 7** requires the applicant to submit, in writing for the review and approval of the Executive Director, a commitment to be solely responsible, including the costs, for remediation of any land in the project area that may have or is found to have hazardous waste or toxins on it, **for as long as this coastal development permit is valid** if applicable, prior to transferring the land to the LCWA through a donation of the land.

- j. **On page 43, the second complete paragraph shall be modified as follows:**

The applicant is proposing to provide open space (approximately 30% of the entire project site) by incorporating 1.81 acres of open space on the western project area and .84 acres of open space on the eastern project area. **While SEASP does not require 30% Open Space for this project, SEADIP did require it. The applicant's project design still incorporates the 30% Open Space, as this is how it was designed when SEADIP was the standard of review. The Commission may require the development to provide open space consistent with other Coastal Act policies, such as improving water filtration processes on site and preserving visual resources and light adjacent to wetlands and upland habitat.**

- k. **On page 45 of the staff report, the first paragraph shall be modified as follows:**

The existing site does not currently provide public coastal access. The nearest access to a public beach is available approximately a mile southwest of the project site at Mother's Beach (**Exhibit 1**), however the site is located between the first public road and the sea (the sea being the channels immediately adjacent to the site). The site is currently gated and does not provide public access to the channels or the adjacent wetlands and uplands. There is a sidewalk on the bridge on the west side of Studebaker Road, adjacent to the project site ~~which leads to Loynes Drive and wraps around the southwestern project area~~, consistent with SEASP, Chapter 6, 6.7 General Development Standards, i. Public Access to provide public access to and along the boundaries of public waterways.

I. On page 54 of the staff report, the third and fourth complete paragraphs shall be modified as follows:

Special Condition 15 requires the applicant to protect cultural resources during project grading and construction activities by submitting an Archeological Research Plan and an Archeological Monitoring and Mitigation Plan which includes a detailed plan for additional archeological research and testing to better characterize the potential for archeological resources on the site (both the eastern and western project areas) and to identify and accurately delineate any resources that may be discovered during the investigations. In addition, as conditioned, if significant resources are found during grading, the applicant is required to leave the resources in-situ. ~~and~~ **If any treatment option other than in-situ preservation is proposed or if the project requires a re-design in order to protect these resources, the applicant is required to** apply for a new permit or a permit amendment to avoid them.

...

The intensity of development of the eastern project area does lead to a direct impact (since it is currently vacant) on Sacred Land and the required grading could have a direct impact on tribal cultural resources which may be present underground. Additionally, the development of the eastern project area may have an indirect impact on the special nature of the Sacred Land being preserved on the western project area for tribal access. There must be mitigation for these developments and their potential impacts to tribal cultural resources. Therefore, the applicant will be donating the western project area to the Los Cerritos Wetlands Authority (LCWA) as native transitional habitat, pursuant to **Special Condition 16** which requires the applicant to work with the Los Cerritos Wetlands Authority to submit a Tribal Access Plan for the affected Tribes to have access to the area for religious and ceremonial gatherings, resource and material gathering, and other tribal uses. There should be equitable access to the site for all affected Tribes. **In addition, the plan shall include methodology for testing for contamination as required by the appropriate federal, state and/or local agency with jurisdiction and implementation of required testing will require a coastal development permit amendment or new permit. Any remediation required as a result of the testing will also require a coastal development permit amendment or new permit.** The LCWA has indicated that they currently run stewardship programming in coordination with several

non-profit groups through a Memorandum of Agreement. There are locks on access gates and the stewardship partners let the LCWA know in advance when they will plan their activities to ensure that it does not conflict with another group's programming. While the Tribal Access Plan for this permit has not been drafted yet, this could serve as a model for the western project area. In addition, the LCWA has indicated that it is working to assemble a Tribal Advisory Group to provide input on its restoration planning process and to plan for tribal access in other areas of the Los Cerritos wetlands. As a condition of this permit, the Tribal Access Plan must be developed in coordination with all affected tribes as described on the NAHC contact list, and shall not be limited to the tribes participating in the Tribal Advisory Group.

- m. On page 55 of the staff report, the first complete paragraph shall be modified as follows:

Conditions of approval require development of an ARP, a monitoring plan, and that if any cultural resources are found, regardless of its eligibility for listing, the resources must be protected in place (in consultation with Native American tribes). ~~and a revised plan must be submitted~~ **If any treatment method other than in-situ preservation is proposed, then the applicant shall apply for a new permit or a permit amendment.** Nothing in this permit or approved plans approves data recovery or excavation of tribal cultural resources. The conditions also require tribal access to the areas that will remain open space, and requires mitigation for the impacts the development has on the sacred land. Thus, as conditioned, the project is consistent with the LCP policies that require reasonable mitigation measures for impacts to tribal cultural resources, including mitigation for the impact to a Sacred Landscape, consistent with SEASP, Chapter 6, 6.7 General Development Standards, p. Tribal, Cultural, Archaeological, and Paleontological Resources and Goal 3.b. of the Open Space and Recreation Element. Even with these conditions, the Gabrieleno/Tongva San Gabriel Band of Mission Indians continues to oppose the project and opposes the staff recommendation and argues that impacts to Sacred Land cannot be adequately mitigated.

- n. On page 59 of the staff report, Appendix A shall be modified as follows:

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Staff Report for Appeal No. A-5-LOB-20-0006 (Panattoni Development Company), dated February 28, 2020

City of Long Beach's Administrative Record for Local Coastal Development Permit (CDP) No. 18-034 (including correspondence with the affected Tribes and the Native American Heritage Commission).