

CALIFORNIA COASTAL COMMISSION

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Th13a

ADDENDUM

July 11, 2023

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO AGENDA ITEM Th13a**, Local Coastal Program Amendment Request No. LCP-5-HNB-21-0057-1 (Magnolia Tank Farm) for Commission Meeting of July 13, 2023.

This addendum is designed to achieve the following objectives. First, it provides responses to some of the points raised in recent correspondence. Second, it provides additional findings recommended to be added to the staff report regarding Archaeological and Tribal Cultural Resources. Third, it replaces Exhibit 10 Low Lying Areas, with a corrected version of Exhibit 10.

I. RESPONSE TO CORRESPONDENCE

A number of comments on the proposed LCPA have been received, both in support of the LCPA and opposed to the LCPA. The correspondence can be viewed on the correspondence tab on the Coastal Commission's website. The response below is tailored to the comments in the letters received from City of Huntington Beach (7/7/2023) and from the Magnolia Tank Farm property owner's (SLF-HB Magnolia LLC) attorney, Norton Moore & Adams, LLP (7/6/2023). These two letters include the main points raised by other letters received in support of the proposed LCPA and opposed to the staff recommendation.

Response:

The City's and property owner's position conflates the denial of a specific project with the recommended denial of a land use change. The staff recommendation would simply maintain the status quo. No coastal development permit for a specific project is being denied. What staff is recommending be denied is a LAND USE change and the accompanying specific plan. The City's and property owner's letters address the merits

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of a project proposal that isn't before the Commission at this time. However, this sets aside and does not address the question that the LCPA raises first – that is, is the land use change that is necessary to implement the project proposal consistent with the Coastal Act and LCP? This question must be addressed first before the question of the merits of the project can be considered. The requested land use change is not consistent with several Coastal Act and LCP policies, but most critically with the hazard policies. In particular, policies that require risk minimization and that new development neither create nor contribute to destruction of the surrounding area, as described in greater detail in the staff report.

Staff is recommending denial of the LCPA, in part because the current land use allows infrastructure (which includes adaptation measures) as a permitted use. The requested land use may accommodate some degree of adaptation, but not as a principal use. Climate change impacts will occur in the area well within the 75-year life of the development that would be allowed by the specific plan. The need for such adaptation measures in the area is undisputed.

The City states that it does not intend to acquire the MTF site or any other site for adaptation uses that address climate change. But to support the requested land use change, the City must demonstrate that the measures necessary to address climate change can be provided without use of the MTF site, which is land use designated and zoned for such uses now. The letter from the property owner's attorney has also questioned whether denial of this LCPA would constitute a takings. Staff's recommendation is not equivalent to a requirement for the property owner to dedicate land. It is important to note that maintaining an existing land use designation and zoning, as staff is recommending, does not approach a takings, but merely maintains the status quo. The land use changes proposed fail to address climate change impacts and fail to minimize risk and fail to prevent destruction of the surrounding area. Further, more complete evaluation from the City on these impacts and risks, and potential climate adaptation infrastructure is a necessary prerequisite.

The City's and property owner's letters point to two past Coastal Commission approvals of repairs to the Orange County flood control channels as evidence that the channels will be adequate into the future. However, as is acknowledged in the City's 7/7/2023 letter, the improvements to the channel will maintain its current capacity. These improvements, while certainly necessary to maintain the status quo and rightly approved by the Commission, are not projects that address the *future* impacts of climate change, including SLR and increased storm events.

Echoing a common response to addressing climate change impacts, the City's letter claims it is "far more reasonable" to assume that future improvements would be made to the flood control system because of the level of risk to the significant amount and types of development it protects (wastewater treatment plant, power plant, and many

residences). Likewise, the property owner states, in its brochure, “offsite flooding will be addressed by future maintenance and improvements of flood control system to protect existing critical infrastructure.” This approach doesn’t address the known hazards but instead defers decision making about these hazards to a point in time where the costs are higher and alternatives more limited. The fact is that neither Orange County nor the City public works departments have identified any comprehensive plans to design or construct needed modifications to accommodate expected increased flows or higher tailwaters in the channels or improved collection, conveyance, and pumping capacity. Moreover, a land use that could contribute to those needed solutions, should not be replaced by one that does not.

The City objects to the staff recommendation because, it claims, it would be placing a de facto moratorium on the LCPA and other LCPAs until the City’s Coastal Resiliency Plan is completed. The City argues such a moratorium would be inconsistent with the Housing Crisis Act of 2019 which prohibits moratoriums on housing development. However, failure to support a land use change at one site in an LCPA, does not constitute a moratorium. No land currently zoned for residential development will be lost as a result of denial of this LCPA. Denial of the LCPA will not affect any other sites in the City that are or may be considered for residential development. And, although the City points to the State’s housing requirements as a basis for approval of the LCPA, the City’s letter does not dispute the staff report’s reference to the fact that the City’s March 2023 draft 6th Cycle Housing Element (2021 – 2029) does not rely on the MTF project to meet its RHNA requirement. Rather, it simply re-states what is already recognized in the staff report – that it is a project in the pipeline. But it is not included in the discussion of how the City will meet its RHNA, or identified as a site that will contribute to meeting it. As described in its March 2023 draft Housing Element, the City will be able to meet its RHNA without the specific plan residential units. Contrary to the way it is being presented by some, this LCPA does not present a question of competing priorities, housing versus flood protection.

Finally, the City’s and property owner’s letters describe the specific plan as if it already includes requirements for 20% affordable housing units, of which some affordable units would be made available to employees at the on-site hotel¹; a total of 4.8 acres of public parks; and that, of the remaining homes, some would be available for sale and others for rent. However, none of these components would be provided with the specific plan

¹ The City’s 7/7/2023 letter states that 20% of the residential units on site will be affordable (50 units), and that 25 of these affordable units will be available to employees of the on-site hotel. However, the property owner’s brochure states that there will be 25 on-site low income units, of which 20% will be available to employees of the on-site hotel (5 units). Other comments received in favor of the LCPA identify 51 affordable units to be provided on-site. It is unclear which is correct. The property owner’s attorney’s 7/6/2023 letter does not specify a number of affordable units or how many of those units would be available to hotel workers.

as currently proposed. Many other amenities represented as part of the specific plan, such as funding for the wetlands conservancy, outreach to underserved communities, and the provision of additional public parking on the public streets Magnolia Boulevard and Hamilton Avenue, are not required by the specific plan as proposed. Staff acknowledges these components might be desirable if the LCPA were consistent with the hazard policies of the Coastal Act and LCP; but it is not.

Although the City and property owner have recently suggested that they are willing to accept these measures, the measures do not address the fundamental LCPA issue of consistency with the Coastal Act and LCP policies, especially those that require minimizing risk and not contributing to the destruction of the surrounding area. In this case, that means reducing climate change induced risk in this very vulnerable area. That is, these measures do not replace the need to address the first question raised by the LCPA, that is whether the requested land use change is consistent with the Coastal Act and LCP.

For the reasons detailed above, staff continues to recommend denial of the LCPA as described in the staff report.

II. RECOMMENDED ADDITIONAL FINDINGS

Staff is recommending the following findings be added to the staff report dated 6/29/2023 to address Archaeological and Tribal Cultural Resources. The findings should be added to the staff report as new Section 5. Archaeological and Tribal Cultural Resources on page 40, following Section 4. Priority of Use (which begins on page 38) and just before Section C. Findings for Denial of the IPA (which begins at the bottom of page 40). Following are the recommended findings (the entire section below is new, but is not presented in **bold underline** text for ease of reading):

5. Archaeological and Tribal Cultural Resources

Section 30244 of the Coastal Act states: Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The California coastal zone has been home to native populations for thousands of years. The consideration of tribal cultural resources, alongside archaeological resources, is now required in planning and permitting decisions by the Commission. Tribal cultural resources may include sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American Tribe. As part of

the Commission's Tribal Consultation Policy², one of the guiding principles is to communicate with and engage with Tribes at the earliest possible stage in the review and decision-making processes.

An Environmental Impact Report was prepared in conjunction with the subject proposal (<https://www.huntingtonbeachca.gov/government/departments/planning/major/files/Draft-EIR.pdf>). Regarding Native American Sacred Lands File Review, the EIR states:

An inquiry was made on August 9, 2017, of the Native American Heritage Commission (NAHC) to request a review of the Sacred Lands File (SLF) database regarding the possibility of Native American cultural resources and/or sacred places in the project vicinity that are not documented on other databases. The NAHC responded on August 23, 2017, with the results of their review and a list of tribal groups and representatives affiliated with the project site. A review of the NAHC SLF failed to indicate the presence of Native American traditional sites/places within the project site or the immediate vicinity surrounding the site. The NAHC did note that the absence of archaeological features and Native American cultural resources does not preclude their existence at the subsurface level. The results of the NAHC SLF is available in Appendix E [of the above referenced project EIR]. Additionally, the Native American representatives and organizations were mailed an informational letter on August 24, 2017, which requested information regarding resources that may exist on or near the project site. Additional attempts at contact by letter, email, or phone call were made on September 1 and September 7, 2017.

As reflected above, and in conjunction with preparation of the project EIR, the Native American Heritage Commission (NAHC) provided a Sacred Lands File (SLF) Search to the applicant. The SLF search was completed but did not identify the presence of any previously known Native American traditional site/places within the project site or the immediate vicinity surrounding the area, but noted that the absence of archaeological features and Native American cultural resources from the SLR search does not preclude their existence at the site or in the surrounding area. Appendix E of the EIR (Phase 1 Cultural and Paleontological Assessment: Magnolia Tank Farm Project, prepared by Material Culture Consulting, Inc., dated November 2017, revised January

² <https://documents.coastal.ca.gov/assets/env-justice/tribal-consultation/Adopted-Tribal-Consultation-Policy.pdf>

2018) identified two cultural resources within a one-mile buffer of the project area: historic-era water tanks and a prehistoric shell deposit.

The NAHC requested that the Gabrieleño/Tongva San Gabriel Band of Mission Indians and the Juaneño Band of Mission Indians Acjachemen Nation be contacted for more information. The applicant sent letters to the Native American groups identified by the NAHC on August 24, 2017, with follow-up attempts to contact by letter, email, or phone on September 1 and September 7, 2017.

In response to the notice, on behalf of the property owner Material Culture Consulting, Inc. consulted with Chairman Andrew Salas and Mr. Matt Teutimez of the Gabrielleno Band of Mission Indians – Kizh Nation. During the consultation, Chairman Salas and Mr. Teutimez identified four prominent villages that had been located in the general project vicinity; stated that the potential presence of a natural spring located southwest of the project site, which would have been in close proximity of the shoreline, would have held spiritual significance, and ceremonial activities would have occurred in such a location; noted that the area would have been ideal for access paths, and would have been a good source for foraging/hunting activities year-round. Chairman Salas and Mr. Teutimez recommended that monitoring by both archaeological and Native American monitors occur during ground disturbing activities. In addition, on September 1 and 7, 2017, a representative of Material Culture Consulting, Inc. spoke by phone with Robert Dorame, Chairperson of the Gabrielino Tongva Indians of California Tribal Council. Chair Dorame indicated that if there were any comments, the Tribe would provide them by the end of the week. No further response is noted in the Cultural and Paleontological Assessment. Finally, on September 1, 2017, Joyce Perry Chair of the Band of Mission Indians Acjachemen Nation indicated by phone that the Tribe had no concerns in regards to the project area.

Also, in accordance with the Commission's Tribal Consultation procedures, staff notified all potentially affected tribal entities listed on the Native American Heritage Commission contact list via letter emailed on August 26, 2022 and included a narrative description of the proposed project and maps depicting the described site. Since that date, the LCPA has remained on a list of projects of potential interest to tribes that is shared with tribal representatives monthly. To date, no responses have been received.

If the LCPA had been approvable, likely suggested modifications requiring Tribal Consultation and archaeological and Native American monitoring during earth disturbing activities would have been imposed in order for the LCPA to be found consistent with the archaeological resource protection policies of the Coastal Act and LCP. However, as discussed elsewhere, there are no suggested modifications that would make the proposed LCPA consistent with the hazard minimization policies of the Coastal Act and LCP. Because staff is recommending denial of the LCPA for those reasons, no

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suggested modifications to address archaeological and Tribal Cultural Resources have been developed.

II. CORRECTED EXHIBIT 10 EXISTING LOW LYING AREAS

Exhibit 10 in the original exhibit packet should be replaced with the attached, corrected Exhibit 10 Existing Low Lying Areas.



Existing low-lying elevations

Below daily average higher tide or MHHW (5.3 feet, NAVD88)

Below King Tide (7.0 feet, NAVD88)

Below highest observed water level (7.7 feet, NAVD88)

Magnolia Tank Farm Site

**Magnolia Tank Farm LCPA
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Existing Low Lying Elevations
Exhibit 10**

Data Sources: Elevation DEM from Orange County Public Works (2012); Aerial Imagery from U.S. Department of Agriculture (2018); Tidal Datum Elevation from NOAA Tide Station 8410660 Los Angeles, CA for 1983-2001 NTDE