

CALIFORNIA COASTAL COMMISSION

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Date: June 27, 2024

TO: Commissioners and Interested Persons

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SUBJECT: Staff Recommendation on City of Huntington Beach Major LCP Amendment Request No. LCP-5-HNB-24-0003-1 (Magnolia Tank Farm) for Commission Meeting of July 10, 2024.

SUMMARY OF LCP AMENDMENT REQUEST NO. LCP-5-HNB-21-0057-1

Local Coastal Program Amendment Request No. LCP-5-HNB-21-0057-1 (LCPA) would affect property located at the 29-acre Magnolia Tank Farm (MTF) site, in the southeastern part of the City. The MTF site is bounded by Magnolia Street to the east, the Ascon State superfund site to the north, the AES electrical generating station to the west, the Orange County Public Work's (OCPW) Huntington Beach flood control channel to the south and southwest, and the Magnolia Marsh to the south. This LCPA is project driven, and changes to the LUP are intended to support the proposed MTF Specific Plan. The City has requested action on the proposed LCPA via City Council Resolution No. 2021-04 ([Exhibit 2](#)).

The Land Use Plan Amendment (LUPA) would change the land use designation at the MTF site from public uses and infrastructure to a combination of residential, commercial and park and conservation open space uses. More specifically, the proposed designation for the 29-acre MTF site would include 19 acres of Residential Medium Density (RM), 4.4 acres of Commercial Visitor (CV), 2.8 acres of Open Space-Park (OS-P), and 2.8 acres of Open Space-Conservation (OS-C), all with a Specific Plan Overlay. The proposed LCPA would also make changes to related figures and text in the certified LUP.

The Implementation Plan Amendment (IPA) would amend the zoning at the site to Specific Plan 18 to add the Magnolia Tank Farm Specific Plan (MTFSP/Specific Plan 18) to the Implementation Plan portion of the certified LCP. This would allow the mixed-use MTF project, including up to 250 medium-density residential units; a new hotel with market-rate rooms and lower cost rooms; and new park and conservation open space. While the proposed IPA would provide the planning and zoning framework for the aforementioned project to be developed, the City would need to approve a coastal development permit (CDP) for the project, after final approval of the LCPA, to permit the development to occur. The subject site is located in the Coastal Commission appeals jurisdiction.

SUMMARY OF STAFF RECOMMENDATION

LCP-5-HNB-24-0003-1 is a re-submittal of an earlier City of Huntington Beach request to amend the LCP to accommodate the project outlined in the Magnolia Tank Farm Specific Plan. A public hearing on the earlier LCPA (LCP-5-HNB-21-0057-1) was held in July 2023. At the time of that hearing there were unanswered questions regarding whether the MTF site's existing land use designation and zoning should be retained because they allow public infrastructure uses, and climate change adaptations are consistent with that allowed use. And the MTF site and surrounding area are known to be vulnerable to climate change impacts including sea level rise (SLR) and flooding. Due to the need for more information, the July 2023 hearing was continued. Subsequently, the City withdrew the earlier LCPA to allow more time to gather the necessary information. Other concerns that were raised at the July 2023 hearing included affordable housing and the potential impacts of contamination associated with the adjacent Ascon State superfund site. In addition, at the July 2023 hearing the MTF site property owner and the City offered additional amenities in conjunction with the specific plan, but the details of the offer were unclear.

At the July 2023 hearing neither the City nor Commission staff had a sufficient understanding of the potential effects of climate change on the area's infrastructure that the LCPA and associated development and surrounding area would rely on, and whether or not the MTF site would be needed to provide additional adaptation options. The current LCPA was submitted in February 2024 and now includes the *Technical Study Assessment of Climate Change Induced Impacts to Flooding in Southeast Huntington Beach and Adaptation Measures for Future Conditions* (Q3 Consulting, 2/22/2024). This study concluded that the recently improved flood walls would provide considerable protection into the future including when accounting for potential increases in pumping, increases in the intensity of rainfall, and SLR caused by climate change expected through 2100. The study identified potential adaptation alternatives for SLR greater than expected by 2100 and concluded that the flood walls will need to be replaced or significantly repaired around 2070, prior to which, SLR can be reassessed and reasonably accommodated through increasing flood wall elevations. The study also looked at the stormwater system inside of the floodwalls which is meant to keep stormwater from ponding inside the low-lying areas. The study identified that increasing the capacity of storm drains and conduits would be sufficient to meet the City's current performance standards for drainage infrastructure during current conditions but that upgrading pump stations would be needed to meet those performance standards accounting for future conditions (SLR and increased precipitation intensity). The study found that flooding from backed up stormwater for both current and future conditions (SLR and increased precipitation intensity) is not expected to cause flooding of structures but rather be contained on and adjacent to City streets. The study also examined the potential ways the MTF site could be used to reduce future flood risk and concluded that the site is not uniquely well suited for adaptation infrastructure to reduce flooding.

Another primary concern from the July 2023 hearing was whether the MTF site posed a unique opportunity for use in whole or in part for adaptation infrastructure which would be consistent with the current zoning. Q3 Consulting coordinated with the Commission's coastal engineer to evaluate several potential adaptation opportunities. The conclusion from these studies, with which the Commission's engineer concurs, is that the MTF site would not be

useful for climate change adaptations. Modeling revealed the site would have negligible flood reduction benefits. Due to the site's location at the top of its local catchment area, the site is not well suited for stormwater storage or for a new pump station. With the information now available based on the Q3 2/22/2024 Technical Study, staff concludes the site will not be useful for climate change adaptations. Suggested modifications recommend a number of measures to decrease likely risk from SLR and flooding. These include standard SLR conditions as well as 1) notification to future residents of the hazards of SLR and flooding in the project area, and 2) a requirement for the formation of an Assessment District or similar funding mechanism to fund the MTF property's fair share of future SLR adaptations needed at the site and the surrounding southeast Huntington Beach area. This suggested modification is in Volume 1 of the Specific Plan at new Section 3.14 Policies/Regulations Regarding Sea Level Rise.

The MTF site is located adjacent to and immediately south of the Ascon State superfund site ([Exhibit 1](#)). The Ascon site contains the toxic remains of its former use as a landfill that, among other things, received oil field waste. The site is under the jurisdiction of the California Department of Toxic Substances Control (DTSC), which is overseeing its remediation. The Commission's coastal engineer and water quality senior environmental scientist engaged in technical discussions with DTSC staff about the potential effects of SLR on changes to groundwater contaminant transport from Ascon. The results of the discussions lead Commission staff to believe that SLR, specifically the potential for SLR to change groundwater conditions in the area, will not result in increased risk of contaminant transport to the MTF site. This is because groundwater shoaling is expected to increase groundwater gradients radiating out from the County flood control channels and this is not expected to significantly change the observed groundwater flow directions at and around the Ascon site. That is, the groundwater flow is expected to continue in its current direction away from the MTF site (to the north and, to a lesser degree, northeast). In addition, DTSC has determined that the risk for residential development at the MTF site is acceptable and that soils from the site that were above acceptable risk threshold have been removed ([Exhibit 6](#)). Nevertheless, a modification is suggested that requires installation of methane mitigation measures in all habitable structures at the MTF site and to also install soil vapor monitoring probes on site. In addition, a modification requiring notification to all future owners and renters/lessees regarding the history and condition of the Ascon site is also suggested. These suggested modifications are in Volume 1 of the Specific Plan at new Sections 3.6.3 and 3.6.6, respectively.

As approved by the City, the MTF Specific Plan does not require any on-site affordable housing. At the July 2023 hearing the property owner and the City indicated a willingness to provide affordable housing at the site, but no specifics were available. Since then, the property owner and City have provided more detail on what is offered. Of the up to 250 residential units that would be allowed at the MTF site, 20% will be affordable units. And, of that 20%, 50% will be made available to income qualifying employees of the on-site MTF hotel on a first right of refusal basis. All the affordable units will remain available, through a recorded covenant between the developer and the City, for a minimum of 75 years. The affordable units will be constructed concurrently with other MTF development and receive final building inspection concurrent with the certificate of occupancy permit for the hotel. The affordability mix for the units will be: 10% extremely low income, 30% very low income, 30%

low income, and the remaining 30% would be available to any of these groups. Modifications are suggested to ensure the affordable units are implemented as offered.

The Specific Plan includes a hotel proposal in which 40 of the 215 hotel rooms will be affordable. The property owner has now offered to modify the number to reflect the more standard total of 25% of the total number of hotel rooms as affordable. As offered by the property owner, the rates for the lower cost hotel rooms will be set at 75% of the statewide peak season average daily rates, with increases allowed consistent with the Consumer Price Index (described in greater detail in the findings). The property owner and City have also offered increased area for on-site public parks from 2.8 acres to 4 acres. In the currently offered version of the Specific Plan, public views of Magnolia Marsh will be available across the hotel site and Marsh Park, from Magnolia Street to the northern property line. A public trail will extend from Magnolia Street through the hotel site and Marsh Park, meaning unobstructed marsh views will be available along the entire property's marsh frontage. There will also be a 70 foot wide conservation buffer between the hotel site/Marsh Park and the flood control channel to ensure that MTF development will be set back adequately to ensure protection of the Magnolia Marsh ESHA. The total distance between MTF development and Magnolia Marsh will be 245 feet. The Specific Plan includes an outreach plan, provided in partnership between the hotel operator and the Huntington Beach Wetlands Conservancy, to offer marsh tours and interpretive programs. These tours and programs will be available to the general public, with outreach specifically directed to disadvantaged communities. The outreach program also includes transportation to bring the disadvantaged communities to the marsh. The project will also provide public parking on the MTF site's Interior Loop Road, which will be open to the public for vehicular, bicycle, and pedestrian use.

The property owner (Shopoff Realty Investments), supported by the City of Huntington Beach, has offered these additional elements to be included with the MTF Specific Plan. Because they are offered after the City's approval of the Specific Plan, suggested modifications to incorporate them would be required. These elements will only be included in the LCP as amended if they are added as suggested modifications to this LCPA by the Commission.

The City is in agreement with the staff recommendation with the exception of the following two remaining disagreements. The City disagrees with the suggested modification to LUP Policy C 7.1.4 which is recommended to make the policy consistent with Sections 30231 and 30240 of the Coastal Act regarding protection of ESHA and buffer distances. The City prefers to retain this policy language as is. The City also disagrees with the suggested modifications to Section 3.4.5 Public Parking of Volume 1 of the Specific Plan that would allow public parking on Magnolia Street with less restrictive time limits than is currently permitted. Staff is recommending no less than a five hour limit between the hours of 6 am and 10 pm (rather than the currently posted 2 hour limit) and no less than a three hour limit between the hours of 10 pm to 6 am (rather than the currently posted 1 hour limit). The location of the on-street parking is within walking distance to the beach and to the public amenities that will be provided at the MTF site.

Staff is recommending denial of the LCPA as proposed and approval if modified as suggested. The motions to carry out the staff recommendation begin on page 9 of the staff report.

ADDITIONAL INFORMATION

The file is available for review at the South Coast District office located at 301 East Ocean Blvd., Suite 300, Long Beach, 90802. The staff report can be viewed on the Commission's website: <http://www.coastal.ca.gov/mtgcurr.html>. For additional information, contact Meg Vaughn in the South Coast District office at meg.vaughn@coastal.ca.gov or (562) 590-5071.

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EXHIBITS

1. MTF Vicinity Maps
 - a) site
 - b) site w/ Ascon & HB Wetlands
2. HNB City Council Resolution No. 2021-04, including:
 - a) proposed land use areas acreages
 - b) proposed general plan map (not part of the LUP Coastal Element)
 - c) proposed Zoning Map (part of the LCP Implementation Plan)
 - d) proposed Specific Plan 18 (MTF) Volumes 1, 2 & 3
 - e) proposed Figure C-9a
 - f) proposed Figure C-9
 - g) proposed Figure C-10
 - h) proposed changes to LUP textAll as approved by the City.
3. Existing & Proposed Land Use Designations (as approved by City)
4. Proposed & Proposed Zoning (as approved by the City)
5. Currently Offered Land Use Areas
6. DTSC Letter Regarding the MTF Site
7. Hbfd Letter Re Methane Mitigation
8. LUP Figure C-33 100 & 500 Year Rain Flood Levels
9. LUP Figure C-28 Newport Inglewood Fault Zone
10. Google Maps Photo Showing Landscaped Berm & Proposed Area of Magnolia Park
11. Location of Existing Bus Stops Nearest to MTF Site
12. Phasing Plan as Proposed (Approved by City)
13. Currently Offered Phasing Plan
14. Suggested Modifications to Land Use Plan & Misc. Suggested Modifications to Implementation Plan Specific Plan 18 (MTF)
15. Suggested Modifications to Volume 1 of Specific Plan 18
16. Suggested Modifications to Volume 2 of Specific Plan 18

I. OVERVIEW

A. LCP HISTORY

The City of Huntington Beach Local Coastal Program (LCP) was certified in 1985 with the City assuming permit issuing authority at that time. The LCP is divided into two components: the Land Use Plan (LUP), which is the City's Coastal Element; and an Implementation Plan (IP), which includes the Huntington Beach Zoning and Subdivision Ordinance (HBZSO), Zoning District Maps, and the Specific Plans located within the Coastal Zone. The Magnolia Tank Farm (MTF) site is within the area included in the originally certified LCP. The IP portion of the LCP was comprehensively updated via LCP Amendment (LCPA) 1-95 in 1997. The LUP portion of the certified LCP was comprehensively updated via LCPA 3-99 in 2001.

B. STANDARD OF REVIEW

The standard of review for the proposed amendment to the LUP/Coastal Element is consistency with the Chapter 3 policies of the Coastal Act. The standard of review for the proposed amendment to the IP/zoning code (MTF Specific Plan), is the certified LUP/Coastal Element.

C. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires local governments to provide the public with maximum opportunities to participate in the development of the LCPA prior to submittal to the Commission for review. The City of Huntington Beach Planning Commission conducted four public study sessions regarding this project before holding a public hearing about the project on October 22, 2019. The City Council then held a public study session on November 18, 2019, and ultimately held a public hearing regarding the project on January 19, 2021. The City Council approved the subject LCP Amendment on January 19, 2021 and submitted it to the Commission for certification.

In addition, the City submitted EIR No. 17-001 to the State Clearinghouse and made it available for public review on the City's website and at the City of Huntington Beach Department of Community Development. A Tribal Consultation letter was sent by email to Native American tribal leaders list provided by the Native American Heritage Commission. One tribal leader suggested mitigation measures, which were incorporated in the EIR.

D. PREVIOUS MTF LCPA SUBMITTAL

On July 13, 2023, the Commission held a public hearing on the first submittal of the MTF LCPA. That LCPA submittal number was LCP-5-HNB-21-0057-1. After taking public testimony and some Commission discussion, the item was postponed at the hearing to provide more time to address issues related to climate change impacts, affordable housing, and the MTF site's proximity to the Ascon State superfund site. On January 18, 2024 the City formally withdrew LCPA No. LCP-5-HNB-21-0057-1.

E. DEADLINE FOR COMMISSION ACTION

On January 26, 2024, the City re-submitted the same MTF LCP amendment request for Coastal Commission certification via City Council Resolution No. 2021-04. The re-submittal was deemed incomplete pending receipt of the report addressing climate impacts to southeast Huntington Beach. That report was received and the submittal was deemed complete on February 16, 2024. On April 12, 2024, the Commission authorized a one-year extension for action on the LCP Amendment request. As such, the deadline for Commission action on this item was extended from June 26, 2024 to **June 26, 2025**.

II. MOTIONS AND RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

1. Deny the LUPA as submitted:

MOTION:

I move that the Commission certify Land Use Plan Amendment No. LCP-5-HNB-24-0003-1 as submitted by the City of Huntington Beach.

Staff recommends a **NO** vote on the motion. Failure of this motion will result in rejection of the LUP Amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

Resolution To Deny:

The Commission hereby denies certification of Land Use Plan Amendment No. LCP-5-HNB-24-0003-1 as submitted by the City of Huntington Beach and adopts the findings set forth below on grounds that the amendment does not conform with the Chapter 3 policies of the Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

2. Certify the LUPA with Suggested Modifications

MOTION:

I move that the Commission certify Land Use Plan Amendment No. LCP-5-HNB-24-0003-1 for the City of Huntington Beach if modified as suggested in this staff report.

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the land use plan amendment with suggested modifications and adoption of the following

resolution and findings. The motion to certify with suggested modifications passes only by affirmative vote of the majority of the appointed Commissioners.

Resolution To Certify the Land Use Plan with Suggested Modifications:

The Commission hereby certifies Land Use Plan Amendment No. LCP-5-HNB-24-0003-1 for the City of Huntington Beach if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the land use plan if modified.

3. Deny the IPA as submitted:

MOTION:

I move that the Commission reject Implementation Plan Amendment No. LCP-5-HNB-24-0003-1 as submitted by the City of Huntington Beach.

Staff recommends a **YES** vote. Passage of this motion will result in rejection of the IP Amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of the majority of the Commissioners.

Resolution to Deny Certification of the Implementation Plan Amendment as Submitted:

The Commission hereby denies certification of Implementation Plan Amendment No. LCP-5-HNB-24-0003-1 as submitted by the City of Huntington Beach and adopts the findings set forth below on grounds that the Implementation Plan amendment as submitted does not conform with and is inadequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Plan amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives or mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Plan Amendment as submitted.

4. Certify the IPA if modified:

MOTION:

I move that the Commission certify Implementation Plan amendment No. LCP-5-HNB-24-0003-1 for the City of Huntington Beach if it is modified as suggested in this staff report.

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Plan amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution to Certify the Implementation Plan Amendment with Suggested Modifications:

The Commission hereby certifies Implementation Plan amendment No. LCP-5-HNB-24-0003-1 if modified as suggested and adopts the findings set forth below on grounds that the Implementation Plan amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

III. FINDINGS FOR DENIAL OF THE LCPA AS SUBMITTED AND APPROVAL IF MODIFIED AS RECOMMENDED

A. HISTORY OF THE SITE AND LCP AMENDMENT DESCRIPTION

Local Coastal Program Amendment Request No. LCP-5-HNB-21-0057-1 (LCPA) is a project driven amendment intended to allow the MTF Specific Plan to be implemented. The MTF Specific Plan would allow future development (subject to a future coastal development permit (CDP)) including up to 250 residential units on 19 acres, a hotel with up to 175 market rate rooms and no fewer than 40 lower cost rooms, and 5.6 acres of open space (2.8 acre of Open Space – Recreation, and 2.8 acres of Open Space - Conservation). Currently the land use designation at the site is Public (P) and the zoning is Public-Semipublic with Oil and Coastal Zone Overlays (PS-O-CZ) ¹. The proposed LCPA would change the land use designation at the site to 19 acres of Residential Medium Intensity (RM), 4.4 acres of Commercial Visitor (CV) (1.5 maximum floor area ratio), 2.8 acres of Open Space-Park (OS-P), and 2.8 acres of Open Space-Conservation (OS-C), all with a Specific Plan Overlay. The RM land use designation allows up to 15 dwelling units per acre. The LCPA would change the zoning at the site to Specific Plan 18 with Coastal Zone Overlay (SP-18-CZ) and would add the MTF Specific Plan (Specific Plan 18) to the IP/Zoning Code. The proposed changes to the LUP and IP are described in greater detail below.

The LCPA requests certification by the Coastal Commission of:

¹ The current land use designation and zoning of Public and Public-Semi Public allow uses such as governmental administrative and related facilities, such as public utilities, infrastructure, schools, libraries, museums, public parking lots, religious uses, or similar types of uses. They are not open space designations.

General Plan Amendment (GPA) 17-001/Resolution No. 2021-03 (Exhibit A of City Council Resolution No. 2020-04);

Zoning Map Amendment (ZMA) No. 17-001/Ordinance No. 4225 (Exhibit B of City Council Resolution No. 2021-04);

Zoning Text Amendment (ZTA) No. 17-005/Resolution 2021-03 (Exhibit C of City Council Resolution No. 2021-04); and

Amended Coastal Element Land Use Plan (Extract of Figure C-9) Text and Figures (Exhibit D of City Council Resolution No. 2021-04).

Project Site

1. Location

The 29-acre vacant site is located in the Southeast area of the City of Huntington Beach. It is northwest of the Santa Ana River, and immediately inland of Magnolia Marsh and Orange County's flood control channel (Huntington Beach Channel). Huntington State Beach is located to the south, seaward of Magnolia Marsh and Pacific Coast Highway ([Exhibit 1](#)). Magnolia Marsh is part of the larger Huntington Beach Wetlands Complex, which also includes restored Talbert and Brookhurst Marshes, and Newland Marsh (restoration of which is pending). The flood control channel wall on the seaward side of the channel, immediately adjacent to Magnolia Marsh, was removed at the time it was restored, circa 2009-2010. The nearest streets to the site are Magnolia Street, immediately east of the site, and Pacific Coast Highway, south of the site. The current site address is 21845 Magnolia Street (west side of Magnolia Street at Banning Avenue), Huntington Beach. There are berms along the northern and eastern property lines, with elevations ranging up to 17 feet. Otherwise, the site is relatively flat and generally slopes from the northwest to the Southeast, with an elevation range from 4.3 to 12.5 NAVD88², with an average elevation of approximately 8.4 feet NAVD88 (not including the elevation of the on-site berms).

2. History

The site was originally part of the larger wetlands complex, but at some point appears to have been drained and/or filled and was used for agriculture from the mid 1800s through the 1960s. In the 1950s, the County of Orange constructed a regional flood control channel along the west/southwest side of the property (Huntington Beach Channel). Between 1972 and 2013, the site supported three, above-ground, 25-million-gallon tanks that stored fuel for the nearby electrical generating station. It is these tanks and its proximity to Magnolia Street that give the site its name. In addition to the three tanks, the site was developed with other oil-related facilities including pipelines and ancillary buildings. A six-acre earthen berm adjacent to Magnolia Street, landscaped with turf and ornamental trees, screened the oil facilities from general public view. The berm remains in place today.

² NAVD88 or North American Vertical Datum of 1988 is the official vertical datum for the U.S. and California. Zero (0) feet NAVD88 is approximately 2.6 feet below mean sea level in the Huntington Beach area.

The nearby Southern California Edison (SCE) power plant was replaced in about 2013 (pursuant to the California Energy Commission's (CEC) approval of the AES Huntington Beach Energy Project). The new AES power plant is fueled by natural gas rather than oil, making the oil storage tanks obsolete. In 2013, local CDP HNB CDP 10-11 allowed for the demolition of the three fuel storage tanks and associated pipelines and ancillary facilities, as well as some minor grading intended to facilitate drainage. The demolition was completed in 2017. The site was subsequently used as a staging and parking area in support of the demolition and construction of the new power plant, as allowed under the CEC approval. More recently, the site has been used for new car storage (approximately 2,000 vehicles), pursuant to local CDP HNB 19-012. The CEC approval required fill on the subject site and any remnant wetlands that may have been present on site were filled. Current Biological Surveys³ of the site determined that no wetlands are present. This conclusion was reviewed and concurred with by the Coastal Commission's staff ecologist.

From the 1970s to mid-1990s, the subject site and the adjacent power plant were land use designated Industrial Energy Production to reflect the onsite uses. The land use designation was updated to Public as part of a comprehensive Coastal Element update pursuant to HNB LCPA 3-99. The zone name was updated pursuant to HNB LCPA No. 1-02. The subject site's existing Public land use designation and associated Public/Semi-Public zoning would allow institutional, public, and commercial uses such as utilities, infrastructure (including flood control and drainage facilities), government facilities, convalescent/assisted living, cultural institutions, hospitals, parks, religious assembly, and schools.

3. Surrounding Development

To the east of the site, across Magnolia Street, are single family residences on lots that are at least 6,000 square feet in size. The Huntington Beach Channel forms the site's southwesterly property boundary, and seaward of and interconnected with the channel is Magnolia Marsh. An Orange County flood control channel maintenance road is located between the site and the flood control channel. Near the midpoint of the westerly property line a bridge extends from the maintenance road across the channel to Huntington Beach Wetlands Conservancy's (HBWC) Magnolia Marsh property. To the west of the subject site, and inland of and adjacent to the AES power plant site, is the site previously proposed for the Poseidon desalination plant.

Ascon State Superfund Site

Adjacent to the site to the north is the 38-acre Ascon State superfund site, a former landfill. Over its period of operation, the landfill received industrial, construction (asphalt, concrete) and oil field (drilling muds, wastewater brines, etc.) waste. Historical records indicate that from 1957 to 1971, chromic acid, nitric acid, sulfuric acid, aluminum slag, oil tank bottoms, oil sump wastes, fuel oils, styrene (a form of plastic), and other wastes were also disposed in the landfill.⁴ Between 2003 and now, there have been two major remediation efforts at this site,

³ Magnolia Tank Farm Project Biological Assessment Update, Steven G. Nelson, 12/8/2021; Magnolia Tank Farm Project Biological Assessment Update – Response to CCC Second Round of Comments, Steven G. Nelson, 3/15/2022; Magnolia Tank Farm Project Biological Technical Letter Report, Blackhawk Environmental, 9/5/2018; Magnolia Tank Farm Project Jurisdictional Delineation Report, ESA, 9/2018.

⁴ 2002 Consent Order between DTSC and Respondents [responsible parties, Exhibit A of Consent Order], 1/8/2003; and Environmental Summary Report, Roux Associates, Inc., 2/5/2024

which removed waste materials, graded, and installed stormwater control features. Since 1991, Ascon has been under the oversight of the California Department of Toxic Substances Control (DTSC).

Waste materials at Ascon were deposited on native soils, at grade, not buried below grade. Berms were constructed around the deposits for containment. A clay layer beneath the deposited waste materials acts as a confining layer from the underlying aquifer/groundwater. Based on monitoring of the site over many decades⁵, DTSC has determined that off-site transport of contaminants of concern in groundwater and soil vapor are limited by the clay layer. Site monitoring further suggests that groundwater beneath Ascon flows north across most of the site, with a smaller portion flowing east (both away from the MTF site). While groundwater monitoring wells have detected volatile organic compounds under the site's interior, monitoring wells along the site's perimeter have yet to detect the presence of volatile organic compounds, indicating that groundwater contaminants are localized and not mobilizing.

A Remedial Action Plan (RAP) for Ascon was approved by DTSC in 2015. The approved RAP includes limited waste removal for off-site disposal, and on-site waste reconsolidation under an engineered cap with a vegetated cover (native grasses and shrubs). The cap will include a landfill gas collection and treatment system and stormwater collection system. Once all RAP activities are completed, Remedy Operations, Monitoring and Maintenance will be implemented, including: vapor treatment system maintenance, soil vapor monitoring, long-term perimeter groundwater monitoring and contingency plan, and cap monitoring and maintenance. The Remedy Operations, Monitoring and Maintenance Plan (OMMP) will be developed once the RAP activities are complete, as information gained during the RAP activities will be needed to inform development of the OMMP.

Implementation of the approved RAP was initially commenced in January 2019 but suspended in June 2019 by DTSC and the South Coast Air Quality Management District due to odor complaints and reports of respiratory issues for nearby residents.⁶ DTSC tentatively expects RAP implementation to re-commence with enhanced odor management in September 2024. RAP field work is expected to take 22 months to complete. Based on that timeframe, DTSC tentatively anticipates completion of the RAP construction in 2026. Restart of the RAP will depend on when the Restart Plan is submitted to DTSC for review and approval from the Ascon Responsible Parties' contractor. The first of two odor mitigation pilots test reports, which evaluated methods to control odor during field work has been received by DTSC. Once the second odor mitigation pilot test report is received, the Restart Plan will be developed and submitted to DTSC. Once that is approved by DTSC the RAP work will recommence.

⁵ Monitoring of the site dates back to 1983, when Ecology & Environment, Inc. (E&E), under contract with the US EPA, prepared a Monitoring Well Installation/sampling Report presenting the results of Site activities. E&E concluded that the wastes onsite have not migrated offsite to the adjacent or shallow ground water. The work performed by E&E was under the oversight of US EPA. (2002 Consent Order).

⁶ [Huntington Beach residents say dust and odors from former Ascon Landfill are causing respiratory issues - Los Angeles Times \(latimes.com\)](https://www.latimes.com)

Once RAP construction is completed, the RAP OMMP will be developed and implemented. The OMMP cannot be developed prior to completion of RAP activities because information from those activities is needed to develop the OMMP. DTSC expects that Implementation of the RAP and subsequently the OMMP at Ascon will protect the surrounding area into the future for the following reasons: Low permeability of native soil below waste; low permeability of vegetated cap, vapor and stormwater collection systems elevated from surrounding grade; perimeter soil vapor monitoring/long term and groundwater monitoring contingency plan; cap structural monitoring and maintenance; formal Sea Level Rise Vulnerability Assessment (SLRVA) to be undertaken during Operations, Maintenance and Monitoring Plan (OMMP) preparation; annual operations and maintenance inspection reports, and five-year reviews of remedy performance.

Regarding the subject MTF site, on August 12, 2021, DTSC issued a Notice of Corrective Action Completion ([Exhibit 6](#)).⁷ The DTSC Notice states:

“In July 2020, SCE prepared a comprehensive RFI Report summarizing all work conducted at the Site. The RFI Report concluded that the Site met the conditions for unrestricted closure, as long as it is subject to recording of a future land use covenant (LUC) restricting groundwater from being used as a potable source.”

4. LUP Amendment Description

The purpose of the LUP⁸ portion of the LCPA, and the changes proposed therein, is to facilitate and support the addition of the MTF Specific Plan and the changes contained therein, into the Implementation Plan portion of the LCP. The changes proposed to the LUP are contained in Exhibit D to City Council Resolution No. 2021 - 04. The LUPA would make the land use designation changes at the site described earlier by adding a new Figure C-9a to the LUP and by modifying existing LUP Figure C-9 to reference the proposed Figure C-9a ([Exhibit 2e](#)). Figure C-9 is a map of the land use designations within Zone 5 of the City's coastal zone, which includes the MTF site. The change in land use designation at the site is the most significant part of the LUPA. The additional changes to the LUP are intended to update the existing maps and charts within the LUP to reflect the proposed land use designation change.

The other changes proposed to the LUP are:

The LUPA would modify the *Sub-Area Descriptions and Land Use Plan* section of the Coastal Zone Overview in the Technical Synopsis section of the LUP. This would be achieved by modifying the section titled Zone 5 – Beach Boulevard to the Santa Ana River. Zone 5 includes all of the land within the City's coastal zone located between Beach Blvd. and the Santa Ana River, including the MTF site.

⁷ The DTSC 8/12/2021 Notice's full title is: Notice of Corrective Action Completion Without Controls for Unrestricted Land Use, Magnolia Tank Farms A.K.A. Shopoff Portion of the Former SCE – Generating Station, 217 Newland Street, Huntington Beach 92464 Huntington Beach, CA (EPA ID Number: CAD 00631085)

⁸ The City's LCP Land Use Plan (LUP) is the Coastal Element of the General Plan, hereinafter referred to as LUP.

The Zone 5 subsection would be modified by adding a reference to Open Space – Park as a land use designation that occurs within Zone 5 to the Zone 5 area discussion and by adding that land use designation to the chart that lists all the land use designations within Zone 5. That same chart also lists all the Specific Plans that fall within the boundary of Zone 5, so that chart would be further modified to add a reference to the MTF Specific Plan. Figure C-10 is a map depicting each of the Sub-Areas within the LUP Technical Synopsis Coastal Zone Overview. Zone 5 includes Sub-Areas 4G, 9F, 4H, and 4G. The MTF site is currently located in Sub-Area 4G, in Zone 5. Sub-Area 4G applied to the site of the former SCE (now AES) Power Plant. Because the MTF site is no longer a part of the power plant facility, the LUPA would modify Figure C-10 by removing the 29-acre MTF site from Subarea 4G of Figure C-10 ([Exhibit 2g](#)).

5. IP Amendment Description

As described earlier, the IP would change the zoning at the site from Public-Semipublic – Oil Production Overlay – Coastal Zone Overlay (PS-O-CZ) to Specific Plan 18 - Coastal Zone Overlay (SP-18-CZ) and would add the MTF Specific Plan (Specific Plan 18) to the IP/Zoning Code. The MTF Specific Plan identifies land uses which correspond to the land uses proposed in the LUPA. These are depicted on Figure 3.1 of the Specific Plan and include: 19 acres of “for sale residential” (Planning Area 3), 4.4 acres of commercial visitor (Planning area 4), 2.8 acres of Open Space-Parks & Recreation (Planning Areas 2A, 2B, 2C and 2D), and 2.8 acres of Open Space-Conservation (Planning Area 1). The IP Amendment is comprised of a change to the zoning map and the addition of the MTF Specific Plan. The contents of the Specific Plan provide the detail of what would be allowed on the site pursuant to the LCPA.

The changes proposed to the IP are contained in City Council Resolution No. 2021-04 ([Exhibit 2](#)):

Exhibit B Zoning Map Amendment No. 17-001/Ordinance No. 4225; and

Exhibit C Zoning Text Amendment No. 17-005/Resolution No. 2021-03.

Magnolia Tank Farm Specific Plan (SP-18) Description

The MTF Specific Plan would allow future development (subject to a future CDP) including up to 250 residential units on 19 acres, a hotel with up to 175 market rate rooms and no fewer than 40 lower cost rooms, and 5.6 acres of open space (2.8 acre of Open Space – Recreation, and 2.8 acres of Open Space - Conservation).

The MTF Specific Plan includes three volumes. Volume 1 includes four chapters which provide an overview and background of the site (Chapter 1), Administration (Chapter 2), Land Use Plan and Development Standards (Chapter 3), and Infrastructure & Services (Chapter 4). These Chapters are followed by three Appendices: Appendix A: Legal Description (of the property subject to the Specific Plan), Appendix B Coastal Hazards; and Appendix C Planning Area Legal Descriptions. Volume II includes design guidelines for, among other things, architecture, landscaping, and site planning. Volume III includes four planning areas and establishes the zoning standards for development as follows:

Planning Area 1: Open Space - Conservation: 2.8 acres of wetland buffer area;

Planning Area 2: Open Space-Parks and Recreation: 2.8 acres of park;

Planning Area 3: Residential: 19 acres of 250 medium intensity for-sale residential units; and

Planning Area 4: Commercial Visitor: 230,000 square foot lodge with a maximum of 175 market rate guest rooms; 40 rooms of guesthouse-style, budget-oriented, family/group overnight accommodations; and ancillary retail and restaurant facilities

a) Residential Development

Nineteen acres of the subject 29-acre property would be developed with up to 250 new residential units. These units are described in Volume 1 of the Specific Plan as the following types of “single family” attached and detached homes: detached single family small lots, detached condominiums, duplex/single family senior condominiums, triplex condominiums, and attached townhome and flats condominiums. However, Volume 2 of the Specific Plan, in Section 5 Residential Guidelines, refers to both single family buildings and multi-family buildings. Although the Specific Plan provides general design preferences, the distinctions between the different housing types are not described in the Plan. Regardless, each residential unit would be individually owned as the Specific Plan requires all homes to be “for sale” residential units⁹. Setback and parking requirements would be decreased and height limits increased under the Specific Plan, compared to requirements in the rest of the IP/Zoning Code. These lesser restrictions, the City has indicated in the staff report for the Planning Commission (10/22/2019), are intended to allow for “attainable housing.”

“Attainable housing” was described in the City Council staff report (1/19/2021) as follows: “In order to create attainable housing, the applicant is proposing development standards that would allow product types that have been built in other parts of Orange County that are more compact and taller with reduced yards and parking compared to what the HBZSO permits.” No further description of attainable housing has been provided, including how more compact and taller units with reduced yards and parking would make the units more “attainable” and to whom.

The same City Council Staff Report (1/19/2021) further states:

“If approved, the residential units would be constructed during the 2021-2029 Housing Element planning period (6th Cycle). All of the units would be counted toward the City’s RHNA targets. **Most of the units would be counted toward the above moderate/market rate income category.** The proposed project is required to comply with the City’s affordable housing requirements of ten percent of the proposed dwelling

⁹ MTF Specific Plan Vol. 1, Section 1.1 states a goal is to provide “for sale” housing; Section 3.2 & Fig. 3.1 describe Planning Area 3 as “For Sale Residential;” same in Table 3-1.

units, which may be provided on-site, off-site or through in-lieu fees. In any instance, the project would also result in the creation of low-income RHNA units.” [emphasis added]

However, no on-site affordable units are required by the proposed Specific Plan. The only reference to affordable housing in the Specific Plan is Section 3.8, which requires:

Section 230.26 of the HBZSO [Huntington Beach Zoning and Subdivision Ordinance which is also the LCP Implementation Plan] applies and requires that at least ten percent (10%) of all new residential construction shall be affordable units. As an alternative to complying with Section 230.26, the City and the Property Owner may enter into an agreement that allows provides [sic] for payment of in lieu fees for 100% affordable housing obligation.

This is the same standard that applies to all larger residential development projects throughout the City.

b) Commercial Visitor Development (CV)

The 4.4-acre Commercial Visitor (CV) area of the Specific Plan would allow up to 175 market rate hotel rooms and no fewer than 40 lower-cost overnight accommodations. The 175 market rate rooms are envisioned in a single building called the Lodge. The 40 lower cost rooms are envisioned in a single building called the Guesthouse. However, the Specific Plan would also allow all rooms to be provided in a single, integrated facility. The up to 175 guest room Lodge is expected to be housed in a 230,000 square foot structure. The Guesthouse is expected to provide “budget-oriented, family/group overnight accommodations in the 40 guest rooms.” In addition to the overnight guest rooms, the Commercial Visitor area will include ancillary retail and dining. The Specific Plan’s development standards require that at least five percent of the gross CV area be public open space, and of that 5%, at least 30% must contain landscaping. The CV area would provide outdoor or unenclosed public open space area on the ground floor, with up to 25% allowed above ground floor. The public open space would include seating and other amenities such as decorative lighting, low-water use water features, distinctive paving, decorative tiles, public art, and bicycle racks. Five percent of 4.4 acres is .22 acres. Thirty percent of .22 acres is about .066 acres, which is the minimum area that must be landscaped, leaving approximately 0.154 acres (6,708.24 square feet) or less available for public open space associated with the hotel use available to the public (depending on the extent of landscaped area within the 5% public open space area). The Specific Plan does not require signage to inform the public of the availability of this public open space.

c) Open Space

Of the subject 29-acre property, 5.6 acres would be designated as open space. A 2.8-acre strip along the boundary with the flood control channel is proposed to be Open Space - Conservation. This segment extends from Magnolia Street on the east, along the flood control channel, to the northwestern property boundary ([Exhibit 3](#)). The width of this area is expected to be approximately 70 feet. The 2.8 acres of Open Space – Parks & Recreation

will be located along Magnolia Street from the northern property boundary to the flood control channel, and a small area northwest of the CV designated area, near the location of the bridge over the flood control channel.

The Open Space – Parks & Recreation area that would parallel Magnolia Street (Magnolia Park), would fall within a portion of the area of the existing landscaped berm. However, at 55 feet wide, it would be narrower than the existing berm's width, except for a small 75-foot-wide area at one of the site entry roads. Overall, this area would be reduced from the landscaped berm's existing area of six acres, to fewer than 2.8 acres (acreage figures for each of the separate park areas are not provided). A public trail is proposed through the length of Magnolia Park. In addition, there would be an area near the proposed site's entrance road at the commercial area, that would be wider than the rest of the park. The Specific Plan indicates that benches would be provided here. Although there is already a six-ft. sidewalk along the length of the MTF site's frontage on Magnolia Street, the Specific Plan indicates that the trail parallel to Magnolia Street is intended to facilitate pedestrian access between Edison Park and Huntington State Beach. Edison Park is located just inland, across Hamilton Avenue, of the Ascon State superfund site adjacent to the subject site's northern property line.

The other open space parks area proposed at the site, near the bridge over the channel, is intended to serve as a staging point for wetlands tours (Marsh Park). The Specific Plan describes future wetland tours, which would begin at the proposed Marsh Park. However, there is nothing in the Specific Plan approved by the City and submitted for Coastal Commission action to describe how these tours would be facilitated or how coordination with the HBWC, the owner and manager of the wetlands, would occur. The project proponent has suggested that funding for the HBWC could be required with every home sale of future residential development at the site, but this is not described in or a requirement of the Specific Plan.

The Open Space - Conservation area, 2.8 acres located along the boundary adjacent to the flood control channel is intended to serve as a buffer between the proposed MTF development and the Magnolia Marsh wetlands. However, the Specific Plan approved by the City and submitted for Coastal Commission action includes a concrete, 24-foot-wide, public trail through the Open Space - Conservation area, that is intended to also serve as a Fire Department Access Lane.

The property owner discussed with City staff the possibility of dedicating the proposed parks to the City to meet other state requirements. However, city staff preferred, and the City approved, accepting park in lieu fees instead.

B. CHANGES TO LCPA OFFERED BY CITY/PROPERTY OWNER SUBSEQUENT TO CITY APPROVAL OF LCPA

The property owner (Shopoff Realty Investments), supported by City of Huntington Beach staff, has offered a number of additional elements to be included with the MTF Specific Plan. Because they are offered after the City's approval of the Specific Plan, suggested modifications to incorporate them would be required. These elements will only be included in

the LCP as amended if they are added as suggested modifications to this LCPA by the Commission. Below is a discussion of the additional elements offered by the property owner and proposed by the City to be included in the LCP.

1. On-Site Affordable Housing

As approved by the City, the Specific Plan's affordable housing requirement would be met by compliance with Section 230.26 of the City's zoning code (also the IP) which requires that either at least ten percent of all new residential construction be affordable units or that an in lieu fee be paid by the developer for 100% of the affordable housing obligation. The Specific Plan, as approved by the City, allows all on-site MTF housing units to be above market rate, for-sale units.

However, the City is now requesting suggested modifications to the Specific Plan to require a minimum of 20% of the total number of on-site residential units at MTF to be affordable rental units. And that, of that 20%, 50% will be made available to income qualifying employees of the on-site MTF hotel on a first right of refusal basis. Moreover, the City's requested suggested modifications include a requirement that all the affordable units remain available, through a recorded covenant between the developer and the City, for a minimum of 75 years, and that the affordable units be constructed concurrently with other MTF development and receive final building inspection concurrent with the certificate of occupancy permit for the hotel. As currently proposed, the affordability mix for the units would be a minimum of 10% extremely low income, 30% very low income, 30% low income, and the remaining 30% would be available to any of these groups. In addition, affordable housing related definitions and other requirements relating to the affordable units are also proposed.

2. Measures to Address Climate Change Impacts

The City is now proposing to include a new section in the Specific Plan, Section 3.14 Policies/Regulations Regarding Sea Level Rise. This new section includes a requirement that an assessment district or similar financing mechanism be developed to fund the MTF development's fair share of the cost to implement future adaptation measures to address SLR and flooding. This is to be prepared prior to issuance of the first residential or commercial building permit, or subdivision, for the property.

Also offered for inclusion in the Specific Plan are specific adaptation measures to address SLR and climate change-related flooding. These measures include: raising the overall ground elevation of the interior portion of the MTF site; raising the building pads on site another two feet; fitting each outlet from the site into the adjacent Huntington Beach flood control channel with tide gates to prevent flows in the channel from entering the project storm drain system; installation of storm drain access holes (formerly manholes) on site near the flood control channel to allow pumps to be retrofitted into the storm drain to provide necessary pressure to drain the MTF site during storm events; requiring that infrastructure materials be resistant to flood damage; designing building foundations to withstand hydrostatic pressures associated with high groundwater levels due to SLR; using foundation concrete that is resistant to adverse impacts due to the marine environment; recordation of a notice that the property owner and all successors in interest waive any rights to hard shoreline armoring to protect

site development; recordation, at the time of issuance of a CDP for residential development, of a binding notice upon the property that alerts all future owners/occupants that: SLR and flooding could render it difficult or impossible to provide services to the site, additional adaptation measures could be required, and that development may be required to be removed or relocated and the site restored if development becomes unsafe for occupancy due to future SLR or flood hazard.

Lastly, this new section requires the City to continue to monitor updates to best available science regarding SLR and update the Specific Plan SLR policies as necessary, as well as identify and implement appropriate adaptation measures to address future SLR and flooding hazards.

3. Lower Cost Overnight Accommodation

The Specific Plan approved by the City includes a hotel use that would provide a lower cost element, envisioning a 175 room, market rate Lodge, and an additional 40, lower cost rooms in the Guest House. The City-approved Specific Plan includes some development standards for the hotel, including: the market rate and lower cost rooms could be in separate or a single facility; fewer than 175 market rate rooms could be provided, but no fewer than 40 lower cost rooms; each lower cost room must include at least two beds; all hotel rooms must be available for use prior to issuance of the 200th occupancy permit for residential development; and that the lower cost room rates would be based on the bottom thirty percent of room rates in the coastal zone ten miles north and ten miles south of the MTF site. The City now proposes replacing the “175 market rate and 40 lower cost rooms” with “215 rooms” and the following development standards to replace the ones listed above: all rooms must be available to the public prior to issuance of the 175th residential occupancy permit (a change from the 200th); at least 25% of the overnight accommodations must be lower cost; the market rate and lower cost accommodations can be provided in the same or separate facilities (no change, the Lodge and Guest House arrangement notwithstanding); the lower cost accommodations must be available to the public concurrent with the market rate accommodations; rates for the lower cost accommodations will be set at 75% of the statewide peak season average daily rate for the calendar year prior to the opening of the hotel facility to the public; and annual rate increases are allowed consistent with the Consumer Price Index.

4. Increased Marsh Park Area & Trail

The City is now proposing to expand the area of Marsh Park compared to the area of the park originally approved in the Specific Plan. The expanded area of Marsh Park will be 1.52 acres. The revised Marsh Park would now extend all the way from the area dedicated to hotel use (CV zone) to the northern property line, meaning the entire area adjacent to and inland of the Conservation area, north of the CV zone will be available for public use and offer public views. The area of this newly offered park expansion would have been residential development as approved by the City. In addition, there will be a public trail leading from Magnolia Park and Magnolia Street, through the marsh-facing side of the CV zone, and extending the length of Marsh Park. Thus, public access and views of the marsh will be provided along the entire length of the wetlands-facing portion of the property.

Another change now proposed is that the public trail, in addition to being extended as described above, will also be placed in the CV zone rather than in the Coastal Conservation zone, where it would have been located in the Specific Plan approved by the City. The City-approved Specific Plan included a 24-foot wide, concrete trail in the conservation area. The CC zone is intended to provide a buffer from the Magnolia Marsh wetlands. As approved by the City the CC zone is 70 feet wide, meaning one third of the area seaward of the hotel would have been concrete, which does not provide any habitat value.

Of the 29 acres MTF site, the areas dedicated to specific uses now offered are:

Open Space – Parks: Marsh Park 1.52 acres & Magnolia Park 2.47 acres
Open Space – Conservation: 2.84 acres
Commercial Visitor: 5.09 acres
Residential: 17.06 acres

5. Magnolia Marsh Tours & Interpretive Programs

As approved by the City, the Specific Plan allowed for a partnership between the hotel operator and “a non-profit wetland education organization” to offer interpretive programs for the public and guests at the Lodge (guests of the lower cost “Guest House” are not mentioned), including gathering space and transportation to the Huntington Beach Wetlands Conservancy (HBWC) Interpretive Center. It also contemplates possible use of the existing bridge over the Huntington Beach flood control channel as a possible access for HBWC led docent tours of Magnolia Marsh. The original Marsh Park, which aligns with the location of the bridge, is to provide the staging area for such tours. Interpretive signage is also to be placed in Marsh Park.

As now proposed, a recorded covenant on the proposed CV zone will establish an outreach program that includes interpretive programs by the HBWC for the public and guests of the hotel. The outreach program is to include a description of how the HBWC will provide outreach to disadvantaged communities to solicit participation in wetland interpretive programs. The outreach program would: establish partnerships between non-profit organizations and disadvantaged communities with the goal of attracting people within such communities to the interpretive programs; creation of outreach materials targeting school districts with Title 1 schools to solicit participation in the programs; require posting information on both the HBWC and the hotel websites notifying the public of the interpretive offerings and opportunities to participate in special events; create cultural interpretive programs for the public in cooperation with local Native American tribal groups; provide opportunities for transportation to the wetlands to facilitate participation in the programs; and establish relationships with environmental organizations such as the Audubon Society and others to provide bird watching opportunities. The outreach program is to be funded by a Collaboration Agreement between the HBWC and the current MTF property owner. The Collaboration Agreement includes a long-term funding mechanism for the HBWC, including for tours and programs, based on a fee to be added to each hotel room rental and a fee on the sale of each residence (with limited exceptions) not including to the first sale.

6. Additional Public Parking

The Specific Plan approved by the City includes public parking along the MTF Interior Loop Road. The City is now proposing additional public parking spaces in a small lot adjacent to Marsh Park, and, pursuant to a Development Agreement with the City, a requirement that the property owner construct curb, gutter and sidewalk improvements along the Ascon property frontage on Magnolia Street and Hamilton Avenue, and along the MTF site's Magnolia Street frontage. These sidewalk and street improvements will also provide on-street public parking. These improvements are to be completed prior to the issuance of the 200th residential building permit.

C. FINDINGS FOR DENIAL OF THE LUPA AS SUBMITTED AND APPROVAL IF MODIFIED

The standard of review for an amendment to a LUP is whether the LUP as amended would conform with and be adequate to carry out the Chapter 3 policies of the Coastal Act.

1. Hazards

Coastal Act section 30253 states, in pertinent part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Coastal Act Section 30250 states, in pertinent part:

- (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Coastal Act Section 30270 states:

The commission shall take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise.

Coastal Hazards Summary

Southeast Huntington Beach is generally a low-lying area that used to be wetlands. It depends on a variety of infrastructure managed by the County (floodwalls that keep ocean water out of developed areas) and the City (a stormwater system that drains and pumps stormwater out to the ocean) to keep from being inundated.

The MTF site is adjacent to the Huntington Beach flood control channel, is bowl shaped, and is relatively low-lying in elevation. The MTF site is currently protected from serious flooding by the County flood control walls and the stormwater system that pumps most of the stormwater that ponds on-site to the Huntington Beach channel.

The surrounding area is also low-lying and protected by County floodwalls. It also relies on the City's stormwater network to drain and pump stormwater out of developed areas to prevent more serious pluvial flooding. Pacific Coast Highway, seaward of the site, is protected by a large sandy beach. The area is potentially at risk from very extreme tsunamis. In summary, the existing infrastructure provides a significant level of protection to the MTF site and surrounding area.

Climate change and the effects of SLR will increase risk in Southeast Huntington Beach. Higher ocean water levels for the floodwalls to hold back, higher tailwaters that backup flood control channels, and shoaling of groundwater around the flood control channels will all reduce the effectiveness of existing infrastructure, requiring adaptation measures by the City. Commission Staff concluded at the July 2023 hearing that neither the City nor Commission had a sufficient understanding of the potential effects of climate change on the area's infrastructure that the LCPA and associated development and surrounding area would rely on, and whether or not the MTF site would be needed to provide additional adaptation options.

On behalf of the City, Shopoff requested that Q3 Consulting study the existing infrastructure systems and how the systems would respond to increased rainfall and SLR. As discussed in more detail below, the study concluded that the recently improved flood walls would provide considerable protection into the future, including when accounting for potential increases in pumping, increases in the intensity of rainfall and SLR, and the stormwater system inside the floodwalls was likewise adequate to protect the site.

Southeast Huntington Beach, a historically low-lying area, relies on county-managed floodwalls and city-managed stormwater systems for protection against coastal hazards. However, the area's reliance on this infrastructure faces increasing risks due to climate change and SLR, which will require adaptation measures in the future. While the existing infrastructure offers substantial protection to the MTF site and surrounding area, continuous adaptation and careful planning will continue to be necessary to manage future flood risks effectively.

Adjacent Superfund Site Ascon

The MTF site is located immediately south of the Ascon Superfund site. The site is undergoing on-going remediation, as required by the California Department of Toxic Substances Control (DTSC) through its enforcement of the Resource Conservation and

Recovery Act (RCRA). In 2019, the remediation efforts were slowed amid complaints of respiratory health issues from nearby residents.

In a letter dated August 12, 2021, DTSC informed the MTF property owner that it had “made a final decision to approve the RCRA Corrective Action Completion Determination without controls for Unrestricted Land Use for the MTF, a.k.a. Shopoff portion of the former SCE – Huntington Beach Generating Station (HBGS) site.” DTSC further determined that “A post-excavation risk assessment concluded that the calculated risk for the residential scenario were acceptable and confirmed that all soils from the Site above acceptable risk thresholds had been removed.” ([Exhibit 6](#)) Although DTSC made these determinations, the determinations did not include consideration of the effects of coastal hazards, such as groundwater rise, at the Ascon site and if those hazards would adversely affect the MTF site.

As part of DTSC’s Draft Sea Level Rise Guidance to DTSC Project Managers for Cleanup Activities (2023), DTSC requires a Sea Level Rise vulnerability assessment (SLRVA) to be conducted at each stage of the remediation process to specifically evaluate the resilience of the wastes and remedy at a site to future SLR impacts. The next step for the Ascon Site remediation process is the development of an Operations, Monitoring, and Maintenance Plan (OMMP), to occur after or near the completion of the current remediation work. When the OMMP is drafted, a SLRVA will also be developed to assess the potential effects of SLR (e.g., changes to groundwater conditions) and the SLRVA will include any necessary recommendations to ensure the remediation of the site functions as required. A Remedy Adaptation Plan would be prepared, as needed, based on the SLRVA findings.

The Commission’s coastal engineer and water quality senior environmental scientist engaged in technical discussions with DTSC staff about the potential effects of SLR on changes to groundwater contaminant transport from Ascon. DTSC explained that because groundwater shoaling is expected to increase groundwater gradients radiating out from the County flood control channels, SLR is not expected to significantly change the observed groundwater flow directions at and around the Ascon Site in a manner that would increase potential for transport to the MTF site.

Hazards Consistency Analysis & Conclusions

Coastal Act section 30253 requires that new development minimize risk to life and property in areas of high flood hazard, assure stability and structural integrity, and neither create nor contribute significantly to destruction of the site or surrounding area. Coastal Act Section 30250 requires that new residential and commercial development be located within or in close proximity to existing developed areas able to accommodate it, or in other areas with adequate public services. Similarly, the LCP – which provides guidance in this case – includes policies that mirror these Coastal Act requirements. In addition, Coastal Act Section 30270 requires the Commission to take into account the effects of SLR in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of SLR.

Planning decisions regarding ways to implement future adaptation measures are often significantly constrained by existing, occupied development that was put in place prior to our current understanding of the risks associated with climate change and sea level rise. Moving

forward, when presented with the potential for significant new development, it is critical to consider not only the site-specific risks, but also the community-scale implications associated with these decisions to ensure that they do not further constrain adaptation options. Land use decisions, such as the LCPA currently before the Commission, afford the best opportunity to apply this broader scale approach. Importantly, maintaining a precautionary approach that considers high or even extreme SLR rates and storm intensities over the long-term and includes planning for future adaptation will help ensure that decisions that are made now and in the near-term future will contribute to a more resilient coastal California. Because few areas will escape some impact from climate change, it is important to consider these impacts and issues on a broad scale, especially at the stage when a land use designation change is being considered, rather than on a case-by-case basis for individual projects.

The Southeast Huntington Beach area, including the MTF site, is a low-lying area currently protected by a variety of built infrastructure managed by the County and the City, including the Huntington Beach Channel and a system of pumps and storm drains. There are known risks to this area from fluvial flooding, extreme precipitation, and groundwater rise that will grow more severe over the coming decades as a result of climate change and SLR. While the onsite flooding risks to the MTF site are expected to be relatively minor with the proposed elevation of the site with fill, there could still be some risk from extreme (greater than 100-year return period) fluvial flooding. However, risks to the surrounding area are much more significant, and, more broadly, raise questions about how this area of the City will be able to address these growing flood hazards.

The current approach to addressing flood risk in the southeast Huntington Beach area has focused on conveyance of storm/flood waters. As rain falls in the watershed, runoff flows to storm drains or along streets to a series of pump stations which then pump water into the Huntington Beach and Talbert flood control channels, where floodwalls keep flowing water inside the channels flowing quickly to the Huntington Beach wetlands and ultimately through the Talbert ocean outlet and into the Pacific Ocean. Recent development in the area, such as the Pacific Shores subdivision located approximately 3,000 feet up the Huntington Beach Channel from the MTF site, has used fill to elevate building pads higher than the surrounding area to help mitigate on-site flood risk.

Flood conveyance and elevating development through fill are both important tools in flood management, but both can have the effect of worsening flood risk elsewhere. One way of understanding this phenomenon is that fill occupies space that could otherwise accommodate floodwaters, reducing a floodplain's "storage" capacity and therefore raising floodwater elevations in the rest of the floodplain faster. In one scenario modeled by Anchor QEA with seven feet of SLR, floodwaters were projected to increase by 0.1 to 0.5 feet in the residential areas east of the MTF site as a result of the fill added to the MTF site compared to existing topography. While these amounts are small relative to the uncertainty in the model, they illustrate that even minor changes to fill in floodplains can have far-reaching effects. Were the floodwalls to fail in another location, the comparison to the existing unfilled condition may be greater.

Another option to mitigate flood risk is flood storage, which can be achieved in a variety of ways and at various scales. For example, small depressions and infiltration swales can

increase flood storage, as can large multi-use flood basins or freshwater wetlands. Storage can help reduce flood risk and mitigate the detrimental effects of additional conveyance and elevating development through fill. Because approaches taken in one location of a watershed or floodplain can have far-reaching impacts, flood and stormwater management is best implemented at large scales, where the impacts and benefits of different development and management strategies can be evaluated.

As discussed earlier, at the July 2023 hearing for this LCPA, Commission staff identified remaining questions and significant uncertainty regarding the approaches the City intends to take to proactively address SLR risks in this area. Specifically, Commission staff identified two critical questions that could inform the Commission's understanding of whether a land use designation change would be consistent with Coastal Act Sections 30253, 30250, and 30270: 1) Would the proposed land use change expose new development to hazards and/or contribute to hazards risks to the surrounding area? and 2) Could the MTF site, which currently has a land use designation that would allow for infrastructure that could help to adapt to hazards, be used for adaptation needs for this southeast area of the City? Following the July 2023 hearing for this LCPA, Commission staff coordinated with the City and Shopoff team to identify key information gaps regarding the Southeast Huntington Beach area's vulnerability to flooding, existing flood control and drainage infrastructure, and plans for adapting to increased potential for flooding from climate change, including the effects of SLR.

For the first question, the 2021 Sea Level Rise Vulnerability Assessment and Adaptation Plan (2021 SLR VAAP) identified that past activities and development at the MTF site have resulted in fill being placed at the site. The LCPA includes proposals to elevate new development on fill to an average of 11.3 feet NAVD88 to allow finished floor elevations for some of its structures at 14 to 16 feet NAVD88. This would place most of the site and the structures built on it above expected extreme water levels for the development's expected 75-year life (approximately year 2100). This fill would also address groundwater rise risks onsite identified by Anchor QEA when it modeled flood scenarios for the site.¹⁰

Further, the 2024 Southeast Huntington Beach Climate Change Technical Study by Q3 Consulting (2024 Study) identified that the recently improved flood walls for the Huntington Beach Channel would provide considerable protection into the future considering potential increases in pumping, increases in the intensity of rainfall, and sea level rise. However, a major tipping point for risks for the flood control system will occur when the downstream portions of the flood channel walls come close to being overtopped by extreme ocean water levels increased with SLR. Based on the current flood control channels, that tipping point would occur for the area east of Talbert channel during a 100-year storm surge event with around 4.2 feet of SLR and for the area around the MTF site during a 100-year storm surge event with around 4.4 feet of SLR. Importantly, these SLR amounts are projected to occur after the end of the current projected service life of the floodwalls which is 50 years

¹⁰ Magnolia Tank Farm Redevelopment Project – Flood Assessment with Sea Level Rise, July 2022 (Anchor QEA)

(approximately 2070).¹¹ In other words, the walls will need to be replaced before SLR is expected to overwhelm the existing capacity.

In addition, the proposed location of the Coastal Conservation zoning area between the Magnolia Marsh and the Huntington Beach Channel on the left and the proposed residential and commercial development on the right intends to act as a buffer that can absorb flood waters should overtopping of the flood control channel walls occur.

Another potential source of hazards risk is flooding from stormwaters backing up during periods of intense rainfall. The 2024 Study looked at the stormwater system inside of the floodwalls, which is meant to keep stormwater from ponding inside the low-lying areas. The existing system does not meet the City's new performance standards that were established in its 2018 Master Plan of Drainage, but pluvial flooding is not expected to cause significant flooding issues.¹² With SLR and increased intensity of storms, flooding is expected to increase but is still expected to be relatively limited to shallow flooding of neighborhood streets and not impact existing structures.

Q3 Consultants identified and evaluated potential adaptation options that could be implemented to bring the City's drainage infrastructure up to its new performance standards. Q3 Consulting found that increasing capacity of storm drains and conduits would be sufficient to meet the new performance standards during current conditions but that upgrading pump stations would be needed to meet the new performance standards accounting for future conditions (SLR and increased precipitation intensity). Q3 Consultants estimated that upgrades to storm drain capacity would cost approximately \$76 million for the Southeast Huntington Beach area, and the rough estimated cost of upgrading and increasing the capacity of the area's six pump stations is \$170 million. The study emphasized that, because the anticipated increases in flooding are not expected to cause flooding of structures, the City will need to find a balance between the cost of upgrading infrastructure and flood reduction benefits that said upgrades would provide. It also highlighted that the City's pump stations were built 40 to 60 years ago and will soon need to be replaced and that improvements to pump station buildings and forebay structures identified in the City's Capital Improvement Program should be coordinated with the City's efforts to upgrade the capacity of the larger drainage system.

As for whether the proposed land use change would result in development that would contribute to hazard risks to the surrounding area, while fill in areas of potential flooding has

¹¹ The lowest parts of the existing floodwalls for areas east of Talbert Channel are approximately 11.8 feet NAVD88. The lowest parts of the existing floodwalls for areas north of Huntington Beach Channel and west of Talbert Channel is approximately 12 feet NAVD88. The elevation of current King Tides is approximately seven feet NAVD88 and the elevation of a 100-year extreme ocean water level is approximately 7.6 feet NAVD88 for the Los Angeles NOAA Tide Station 9410660.

¹² The Huntington Beach Master Plan of Drainage was prepared for the City by TetraTech, 2018 established new, more conservative, performance standards for drainage infrastructure in the City and identified existing drainage system deficiencies and recommended potential improvements to bring the drainage system into compliance. The analysis performed by Q3 Consulting in the 2024 Assessment of Climate Change-Induced Impacts to Flooding in Southeast Huntington Beach and Adaptation measures for Future Conditions identified pluvial flooding is mostly contained at shallow depths in neighborhood streets with significant flooding of structures or major arterials not expected.

the potential to increase floodwaters in surrounding areas, the 2024 Study showed that the potential for this effect to materialize is extremely unlikely. Specifically, the study found that for this effect to occur, flooding would have to occur on the MTF site, which would generally only result from overtopping of the flood control channel. As discussed above, flooding during a 100-year flow worsened by increased rainfall intensity and sea level rise is not expected to result in overtopping over the 50-year life of the flood control channels, beyond which it is expected that the flood channel walls would need to be replaced. Further, the 2024 Study notes that raising the flood channel walls in the future is likely a reasonable strategy to manage future flood risk in the Southeast Huntington Beach area.

For the second question regarding whether the MTF site could be used to accommodate adaptation needs for the entire area, the Commission's coastal engineer worked with Q3 Consulting to evaluate potential adaptation strategies, such as using the MTF site as an overflow storage area to receive floodwaters. Q3 modeled this scenario and found the site would have negligible flood reduction benefits.

The other adaptation opportunities evaluated were focused on use of the site to reduce pluvial flooding inland of the flood walls. Due to the site's location at the top of its local catchment area, the site is not well-suited for stormwater storage or a new pump station. Stormwater would need to be re-routed from the north or east via new deeper stormwater pipes in combination with pumps to significantly add storage or pumping capacity. Likewise, as the site currently exists, much of the on-site stormwater is directly pumped into the flood control channels, meaning on-site storage would not gain much capacity for the existing City stormwater system. Thus, the study concludes that the site would not be appropriate or feasible for this purpose. Further, the study identified that other adaptation options such as maintaining and increasing the height of the flood control channel walls and upgrading and adapting the stormwater infrastructure in the area would provide the most protection from flooding for the surrounding area.

In summary, the 2024 Study determined that implementing adaptation measures at the MTF site to mitigate flooding impacts for the entire Southeast Huntington Beach area would not be necessary nor feasible, and the Commission's Engineer concurs that use of the MTF site for adaptation would not minimize hazards to the surrounding area in a practical manner.

However, the fact remains that the proposed land use designation changes would allow for more intense development of the site (up to 250 new private residences, a new hotel, and visitor serving areas), resulting in development that is itself far less adaptable to SLR and other coastal hazards and which would rely on access, transportation, and other infrastructure beyond the MTF site that will be vulnerable to climate change impacts in the future. Thus, although the studies provided to the Commission predict that expected hazards risks can largely be mitigated, the proposed LCPA does not ensure that risk in this high flood hazard area is minimized nor that the proposed new development will continue to be served with adequate public services as flood and SLR risk worsens over time. While the existing infrastructure will provide considerable flood reduction benefits, making flooding in the Southeast Huntington Beach area unlikely over the life of development at the MTF site, the potential for damage and loss of life in the event that the infrastructure fails is immense. Therefore, to ensure that the proposed land use designation change complies with Sections

30253, 30250, and 30270, the Commission finds that the proposed LUPA must be denied as submitted and approved only if modified.

The certified LUP contains several tables that describe the City's community districts and subareas, their permitted uses, and their standards and principles. **Suggested Modification A.3** requires revisions to Table C-2, which addresses the subarea that encompasses the MTF site, to include a requirement that all future owners and renters/lessees at the site shall receive written notification of known and potential hazards related to climate change and sea level rise (as discussed in greater detail in the Specific Plan IPA).

Suggested Modification A.3 requires revisions to Table C-2 to include language regarding the creation of an assessment district or similar financing mechanism to be developed and implemented for the entire site to fund the site's fair share of the cost of adaptation to address climate change impacts (as discussed in greater detail in the Specific Plan IPA).

Together, these suggested modifications ensure that the land use decision and the subsequent development will 1) minimize risks both at the site and to the surrounding area, 2) be located in an area with adequate public services, 3) require that any necessary future adaptation measures to protect the site and surrounding area could be funded through the financing mechanism, and 4) contribute to the avoidance and mitigation of the adverse effects of SLR.

Seismic Hazards

Like most of coastal California, the project site lies in an area subject to earthquakes. The most acute seismic hazards stem from the site's proximity to the Newport-Inglewood Fault, a right lateral, slip-strike fault that underlies the southern California coastal plain for about 50 miles between Newport Beach and southern Los Angeles County. Movement along the NIFZ has generated a number of earthquakes in recent history, most notably the magnitude (M_w)¹³ 6.3 1933 Long Beach earthquake, which is thought to have occurred along a trace of the NIFZ offshore of Huntington Beach. The USGS estimates that the NIFZ has an approximately 1% chance of generating an earthquake of M_w 6.7 or greater, and a small (<0.3%) but non-negligible chance of producing an earthquake greater than M_w 7.5, in the next 30 years.¹⁴

The California Geologic Survey (CGS) has designated several segments of the NIFZ in the southern Huntington Beach area as being within active Alquist-Priolo Earthquake Fault

¹³ Earthquake magnitude, which describes the amount of energy released by an earthquake, is expressed using the moment magnitude scale (MMS, M_w), which adjusts the more familiar Richter, or local, magnitude (M_L) to account for the area of fault rupture, the amount of slip during an earthquake, and the material properties of the rocks and other earth materials through which the seismic waves pass, and thus provides a better measure of the amount of energy released by an earthquake. The MMS is a logarithmic scale ranging from 1.0 M_w (barely perceptible) to the strongest measured earthquake at 9.5 M_w . Each increase of 0.2 on the scale – for example, from 7.0 to 7.2 – represents approximately a doubling of the energy released by an earthquake.

¹⁴ Field, E.H., Biasi, G.P., Bird, P., Dawson, T.E., Felzer, K.R., Jackson, D.D., Johnson, K.M., Jordan, T.H., Madden, C., Michael, A.J., Milner, K.R., Page, M.T., Parsons, T., Powers, P.M., Shaw, B.E., Thatcher, W.R., Weldon, R.J., II, and Zeng, Y., 2013, Uniform California earthquake rupture forecast, version 3 (UCERF3)—The time-independent model: U.S. Geological Survey Open-File Report 2013–1165, 97 p., California Geological Survey Special Report 228, and Southern California Earthquake Center Publication 1792, <http://pubs.usgs.gov/of/2013/1165/>;

Zones, including a portion of the North Branch Fault located approximately one mile northeast of the proposed project site. Several other mapped fault segments occur closer to the site, including the NIFZ's South Branch Fault, which crosses the central portion of the site in a NW-SW direction. The South Branch is not considered active (no evidence of activity within the last ~12,000 years) and presents an unknown, but likely very low, risk of fault rupture. In addition to the NIFZ, there are numerous other active faults in the region which, though more distant from the subject property, are still capable of producing large earthquakes and strong ground-shaking in the project area. In combination, local and regional active faults are responsible for a number of seismic hazards on or near the site, including fault rupture, strong ground shaking, liquefaction, lateral spreading and ground settlement. Each of these hazards is addressed briefly below.

Fault Rupture

Ground surface rupture can occur during an earthquake that has some combination of vertical or lateral offset, causing differential movement at the surface trace of the active fault. Under State law, the Alquist-Priolo Earthquake Fault Zoning Act tasks the CGS with identifying "active" fault traces (i.e., faults with evidence of movement during the Holocene, within the last 11,700 years), and requires new buildings intended for human occupancy to be set back from active faults. As discussed in the several geologic reports prepared for the MTF site,^{15,16,17,18} the site is not located within an Alquist-Priolo Earthquake Fault Zone, no active faults occur on the site, and the potential for ground rupture is considered low.

However, as noted above, the proposed development would be located above a mapped segment of the South Branch Fault ([Exhibit 9](#)) that has not been designated as active pursuant to Alquist-Priolo guidance. The South Branch Fault is less well understood than some other segments of the NIFZ, due in part to the extensive fill and development along the fault route that tend to mask surface expressions of faulting and make seismic investigations more difficult. A recent review of the available literature on the South Branch fault concluded that there was no specific evidence for recent (Holocene) activity on this fault segment, but that the methods of the studies that have been done to date are insufficient to rule out Holocene activity.¹⁹ The South Branch fault trace is classified by the City of Huntington Beach as a Category C fault, which requires special studies including a subsurface investigation for

¹⁵ EEI, 2016. Geotechnical Evaluation, Shopoff Landfund II LP, Proposed Residential Development, HB-Seaside Magnolia, Magnolia Street and Banning Avenue, Huntington Beach, California. EEI Project No. SHO-72233.4a, February 17, 2016.

¹⁶ LGC Valley, Inc., 2018a. Revised Geotechnical Study for the Preparation of an Environmental Impact Report for the Proposed Development Located at 21845 Magnolia Street Within the City of Huntington Beach, California. Project No. 164011-01. March 14, 2018, Revised November 15, 2018.

¹⁷ LGC Valley, Inc., 2018b. Alternative 1 Site Configuration Recommendations – Addendum to Geotechnical Study for the Preparation of an Environmental Impact Report for the Proposed Development Located at 21845 Magnolia Street, within the City of Huntington Beach, California. August 22, 2018, Revised November 15, 2018.

¹⁸ LGC Valley, Inc., 2020. Limited Geotechnical Investigation Report for the Proposed Magnolia Tank Farm Project, 21845 Magnolia Street, Huntington Beach, California. June 5, 2020.

¹⁹ See Lettis Consultants International, Inc., Assessment of the Newport-Inglewood Fault Zone, AES Electrical Generation Facility, Poseidon Desalination Project, Newland Street and Pacific Coast Highway, Huntington Beach, California, May 13, 2020.

critical and important land use. EEI (2016) provided a limited evaluation of faulting at the site based on available borings and cone penetration test (CPT) soundings, finding no evidence of offset strata or onsite faulting. However, a more detailed site-specific geotechnical investigation would be necessary to fully evaluate the potential for surface fault rupture and displacement at the site and determine appropriate strategies for avoiding and minimizing the hazard. The Commission suggests a modification that modifies LUP Table C-2 to add new subarea 4L to address the MTF site. To address the MTF site's seismic concerns, that suggested modification includes a requirement that a site specific, design level Seismic Hazards Investigation, be submitted with any CDP application for the site.

Ground Shaking, Liquefaction & Lateral Spreading

A large earthquake on the NIFZ or one of the other active faults in the region has the potential to cause strong ground-shaking that could damage structures or endanger human life at the project site. The intensity of ground shaking in response to an earthquake is governed by the size and geometry of the fault rupture, the amount of energy released, the distance to the epicenter, the duration of shaking, and the nature of the geologic materials at a site. At locations underlain by poorly consolidated materials, such as the alluvial fan and lagoonal deposits and artificial fill that underlie much of the project site, ground shaking is likely to be amplified. Based on the information provided by LGC (2020), a M_w 7.49 earthquake occurring on the NIFZ near the site could result in very high intensity ground shaking, with a horizontal peak ground acceleration (PGA) of 0.73g (where g is equal to the force of gravity). A site-specific, probabilistic ground-shaking analysis will be necessary in order to inform project design and conform to the California Building Code.

Secondary effects of strong ground shaking at the MTF site may include liquefaction and lateral spreading, which have the potential to damage or cause the collapse of buildings and foundations, distort or break utility lines or damage the flood protection structures along the Huntington Beach Canal channel west of the site. Liquefaction occurs when loose, saturated, sands and silts are subjected to strong ground shaking. The strong ground shaking causes porewater pressure to rise, soils lose shear strength and become liquid, potentially resulting in large total and differential ground surface settlements. Lateral spreading involves the horizontal displacement of large blocks of surficial materials resting on top of liquefiable sediments, and generally occurs on flat to gently-sloping ground adjacent to an unsupported free face such as a stream or channel. The entire project area is located within a mapped liquefaction hazard zone.²⁰

Some of the groundwater-saturated, silty and sandy alluvial/axial channel deposits below depths of approximately 8 feet underlying the site are considered to be highly susceptible to liquefaction. EEI (2016), LGC (2018) and LGC (2020) performed quantitative liquefaction analyses, and estimated that total and differential liquefaction induced settlement at the site could be up to 2 – 3.25 inches. The geotechnical studies also noted a moderate to high potential for relatively large lateral ground displacements to occur towards the Huntington Beach Canal on the west and east sides of the MTF site, respectively. In addition, the

²⁰ <https://gis.data.ca.gov/datasets/cadoc::cgs-seismic-hazards-program-liquefaction-zones-1/explore?location=33.651331%2C-117.962642%2C14.00>

existing fill and natural deposits underlying the site are potentially compressible and are not suitable to support the proposed development without mitigation (e.g., ground improvement and/or deepened foundations).

The available preliminary geologic assessments indicate that the proposed development will require significant engineering to mitigate the geologic and seismic hazards at the site, in particular the effects of static and seismic settlement and lateral ground displacement. Based on the project proposed at the time, LGC (2020) recommended extensive mitigation measures, including:

- Removal of the upper approximately 10 feet of unsuitable soils across much of the site, and replacement with compacted, engineered fill;
- Where necessary, placement of fill surcharge to accelerate the static settlement of the site soils prior to construction;
- Along Huntington Channel and adjacent to the Ascon site, construct a 20 – 35 ft wide, 15 – 20 ft deep zone of ground improvements to stabilize the soil and minimize risk of lateral spreading;
- Construction of the proposed hotel structure on deepened foundations, or on shallow foundations supported ground improvement methods.

In general, the ground improvement methods discussed by LGC (2020) that could be implemented at the site included stone columns, compaction or jet grouting, aggregate piers, and deep soil mixing. To minimize these geologic risks, as required by Section 30253, final project design, including foundation and ground improvement plans, should be informed by a site-specific, design-level seismic hazards investigation. This requirement is included in **Suggested Modification No. A.3**, which requires that such a study be included in the application submittal for any CDP at the MTF site.

2. Lower Cost Overnight Accommodations

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30213 of the Coastal Act states:

Lower-cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. Developments providing public recreational opportunities are preferred. The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, hotel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

The City proposes to amend its LUP to allow for 4.4 acres of Commercial Visitor (CV) area at the MTF site, within which the proposed MTF Specific Plan would allow future development of a new hotel with up to 175 market rate rooms and no fewer than 40 lower-cost rooms. This hotel is intended to facilitate public access to Huntington State Beach, promote ecotourism of Magnolia Marsh, create job opportunities, and generate tax revenue for the City. The proposed LUP amendments to achieve this include land use map changes and a reference to the MTF Specific Plan in the chart that lists all land use designations and specific plans for Zone 5. As proposed, the LUP amendments do not specifically reference or provide for lower-cost overnight accommodations at the MTF site; they are only provided for via a reference out to the MTF Specific Plan.

Historically, the Commission has approved many new hotel developments along the coastline and has recognized that hotels and other overnight accommodations provide important visitor-serving facilities that can promote coastal access. However, proposed new hotels are often designed to be exclusive and to have high room rates, particularly in recent years.²¹ In order to address this issue and comply with the Coastal Act, the Commission has required that projects and LCP amendments ensure that new overnight accommodations will have facilities that serve a range of incomes.²² This is becoming increasingly important as recent market trends show that the majority of new hotels being developed are higher cost, and the remaining lower-cost to moderate-cost hotel accommodations in the coastal zone tend to be older structures that become less economically viable as time passes. As more redevelopment occurs, the stock of lower-cost overnight accommodations tends to be reduced, since it is often more profitable for developers to replace these structures with higher-cost accommodations.²³

The dwindling supply of affordable overnight accommodations in the coastal zone is also an environmental justice issue. Such trends have made it much more difficult for visitors who have limited means to access the coast. This is particularly true for visitors traveling from inland locations that cannot easily make the trip to the coast and back home again in a single day. A State Coastal Conservancy-commissioned survey in 2017 identified that “low and middle-income households, people of color, and young people are less likely than higher-income, white, or older Californians to stay overnight at the California coast” and states: “Respondents cited financial concerns as the primary reason they do not stay overnight at the coast. Over 45% of Californians said that overnight accommodations at the coast were inconvenient or unaffordable.”²⁴ With far fewer low-cost lodging facilities, a large segment of the population will be effectively excluded from overnight stays at the coast.

²¹ [Explore the Coast Overnight- An Assessment of Lower Cost Accommodations](#), published by State Coastal Conservancy on January 8, 2019.

²² [HNB-MAJ-2-06](#) (Huntington Beach-Timeshares); [A-6-PSD-8-04/101](#) (San Diego-Lane Field); [A-5-RPV-2-324](#) (Rancho Palos Verdes-Long Point); [RDB-MAJ-2-08](#) (Redondo Beach); [SBV-MAJ-2-08](#) (Ventura); [5-98-156- A17](#) (Long Beach-Pike Hotel); [LOB-MAJ-1-10](#) (Long Beach-Golden Shore); [A-5-VEN-21-0011](#) (Wynkoop Properties, LLC); [A-5-LGB-21-0060](#) (Pacific Edge Hotel), and [5-18-0872](#) (Sunshine Enterprises LP).

²³ [Public Workshop: Lower Cost Visitor Serving Accommodations](#), published by Commission staff on October 26, 2016.

²⁴ [Explore the Coast Overnight- An Assessment of Lower Cost Accommodations](#), published by State Coastal Conservancy on January 8, 2019.

The Coastal Act requires that maximum access be provided to coastal waters, and the Commission has recognized that one aspect of ensuring maximum access is to provide coastal accommodations that are affordable to all. Section 30213 of the Coastal Act also specifically requires that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. In addition, the Commission's Environmental Justice Policy, adopted in March 2019, calls for the Commission to "strive for a no-net-loss of lower-cost facilities in the coastal zone, while implementing a longer-term strategy to increase the number and variety of new lower-cost opportunities."²⁵ Pursuant to Coastal Act Section 30013, the Commission and all public agencies are charged with advancing environmental justice when implementing the Coastal Act. By protecting and providing lower-cost lodging for the price-sensitive visitor, the Commission can remove barriers and increase access to environmental justice communities facing inequities when visiting the coast. This in turn enhances access to coastal recreational facilities like beaches, boardwalks, and the Coastal Trail.

In past projects, the Commission has found that one method of encouraging and providing new lower-cost accommodations is to ensure at least 25% of the total proposed new market rate hotel rooms are provided at lower-cost rates.²⁶ In this case, the property owner has acknowledged that provision of on-site lower-cost overnight accommodations is feasible, as it originally proposed 175 market rate rooms and no fewer than 40 lower-cost rooms as part of the MTF Specific Plan. This proposed ratio falls just short of the 25% lower-cost accommodations ratio, which would be met by providing a minimum of 44 lower-cost rooms. However, as proposed, this language would only appear in the MTF Specific Plan and not in the LUP.

Another aspect of ensuring compliance with Section 30213 is determining what is considered "lower-cost." In a market subject to constant change, it can be difficult to define what price points correspond to lower-cost, moderate-cost, and higher-cost accommodations for a given area. The Commission has used varying approaches to define such terms, including considering the unique circumstances for each project and applying a quantitative methodology for determining what is considered "lower-cost." In some past projects, the Commission has used a methodology based on California hotel and motel accommodations that did not account for hostels, RV parks, campgrounds or other alternative accommodations in the equation, as these facilities do not typically provide the same level of accommodation

²⁵ [California Coastal Commission Environmental Justice Policy](#), published by Commission staff March 8, 2019.

²⁶ Ref. [5-22-0799](#) (Ocean Avenue Partners, LLC and Belle Vue Plaza); [A-3-PGR-22-0004](#) (American Tin Cannery Hotel Resort); [A-6-ENC-22-0049](#) (Encinitas Beach Land Venture I, LLC); [A-5-LGB-21-0060](#) (Highgate Hotels); [5-20-0597](#) (Franco); [5-20-0181](#) (B&J Capital Group Investments); [5-18-0872](#) (Sunshine Enterprises, LP); [A-5-DPT-18-0046](#) (Lancor); [Public Workshop: Lower Cost Visitor Serving Accommodations](#), published by Commission staff on October 26, 2016. Although Coastal Act Section 30213 does not allow the Commission to set room rates at an amount certain, applicants may choose to meet Coastal Act requirements for access and lower-cost accommodations by proposing projects that include commitments to provide rooms at lower-cost rates. Without such commitments, the Commission would need to consider imposing different requirements to address Coastal Act mandates, such as requiring construction of some inherently lower-cost accommodations (e.g., campground, hostel) or imposing in-lieu fees. In addition, when taking this approach, the Commission has not set specific rates for rooms; rather, it has defined lower-cost rooms by reference to a fluctuating average, as further described in these findings.

as hotels and motels. The formula calculates the average daily rate (ADR) of lower-cost hotels and motels—generally during the peak summer months of July and August— based on the ADRs of double occupancy hotel and motel rooms across the entire State of California. Under this formula, “lower-cost” is defined as overnight accommodation room rates equivalent to 75% or less than the calculated statewide ADR for the given peak period. To obtain data inputs for the formula, statewide ADRs are collected monthly by Smith Travel Research and are available on the “Visit California” webpage.²⁷ To ensure that the lower-cost hotels and motels surveyed meet a minimally acceptable level of quality, including safety and cleanliness, standard use of the formula only includes AAA Auto Club-rated properties scoring a one- or two-diamond rating.²⁸ This approach has been recently corroborated by the Coastal Conservancy’s 2019 Explore the Coast Overnight Study, which based its assessment of existing lower-cost coastal accommodations on a study that defined such accommodations as those having a daily rate of 75% or less of the statewide ADR.

In this case, the City originally required via the Specific Plan that the lower-cost room rates would be “determined by an annual survey of all hotel/motel room rates in the Coastal Zone ten miles north and south of the project site. The lower cost room rates in the Specific Plan area shall be within the bottom thirty percent of the hotel/motel room rates in the survey.” Due to its narrow focus on Orange County coastal zone ADRs, the proposed methodology represents a higher price point than the statewide ADR approach described above, which could create barriers for visitors with limited means to access the coast, especially visitors traveling from inland locations and from low-income communities that face inequities when visiting the coast.²⁹ The small radius of the proposed survey area creates a likelihood that the resulting lower cost rates would fluctuate greatly from year to year, and the reliance on annual data collection from unverified outside sources presents an uncertainty that would not exist with the methodology that relies on Smith Travel Research data.

The Commission finds that increasing access to the coast for the price-sensitive visitor is crucial in resolving long-standing socioeconomic inequities and in enhancing coastal access for all people, and in this case, that can best be achieved through defining the lower cost room rates based on statewide ADRs. The proposed approach is thus inconsistent with Coastal Act Sections 30210 and 30213 which require lower-cost lodging to be provided, where feasible, and to maximize coastal access and recreation opportunities for the public. In addition, as with the ratio of market-rate to lower-cost rooms, the definition of lower-cost is only proposed to appear in the MTF Specific Plan and not in the LUP.

²⁷ <https://www.visitcalifornia.com>.

²⁸ <https://www.aaa.com/diamonds/diamond-ratings-definitions.html>

²⁹ Neither the City nor the developer provided the hotel survey information needed to calculate exactly what the originally proposed lower-cost room rate threshold would currently be. The closest comparable information that is available from Smith Travel Research is for Orange County as a whole. For example, for 2023, the statewide approach would result in a maximum lower-cost room rate of \$150.39, while considering Orange County only would result in a maximum lower-cost room rate of \$168.95 (both based on 75% of peak season ADRs). However, \$168.95 likely represents a lower price point than the originally proposed approach, as it would include a larger sample size and more inland, non-coastal hotels and motels, and is based on a 75% factor rather than the proposed “bottom thirty percent” approach. Thus, the price difference between the statewide approach for defining lower-cost and the originally proposed approach is likely even more significant.

In sum, the proposed LUP amendment, as submitted, fails to comply with Coastal Act requirements regarding maximization of access and provision of lower-cost accommodations. Specifically, the proposed method of complying with these requirements—by providing onsite hotel rooms that will be offered at lower-cost rates—is something the Commission strongly supports and that is consistent with the Coastal Act. However, the proposed number of lower-cost rooms, and the method of calculating the rates to be charged, are insufficient because they would not provide lower-cost accommodations or access to the coast to the extent feasible. The Commission therefore finds the submitted LUP to be inconsistent with the Coastal Act's public access and lower-cost accommodations provisions.

However, subsequent to the submittal of the LCP amendment, the City offered to modify its proposal to address these issues. The City now proposes to have the LUP state that it allows up to 215 hotel rooms, with a minimum of 25% offered as lower-cost accommodations, and to define such lower-cost rooms as those that are offered at no more than 75% of the statewide peak season ADR for the calendar year prior to the opening of the facility to the public. This rate may be increased up to a certain amount, based on the California Consumer Price Index for Urban Consumers, once per year. As described above, this proposal is consistent with the Coastal Act's requirements to provide a range of overnight accommodations and to maximize access to the coast. In order to implement the City's proposal to have the hotel provide at least 25% lower-cost overnight accommodations at rates that maximize coastal access and recreation opportunities for the public in compliance with Sections 30210 and 30213 and in alignment with the Commission's Environmental Justice Policy, the Commission finds that the proposed LUP amendment must be denied as submitted and approved only if modified to include these changes to the LUP. The City and property owner concur with these changes and support the Commission's use of suggested modifications here in order to carry out the requested changes to the LUP amendment.

The certified LUP contains several tables that describe the City's community districts and subareas, their permitted uses, and their standards and principles. **Suggested Modification A.3** revises Table C-2, which addresses the subarea that encompasses the MTF site, to include such permitted uses and standards and principles for the MTF Specific Plan area. These modifications specify CV as a permitted use; add a description of the proposed CV area within the MTF site; specify that a minimum of 25% of the total number of hotel rooms in the CV area must be lower-cost; provide a baseline definition of "lower-cost" as "no more than 75% of the statewide peak season average daily rates for the calendar year prior to the opening of the facility to the public;" and defer to the MTF Specific Plan for additional standards and requirements. References to the MTF hotel with a minimum of 25% lower-cost rooms are also added in the *Sub-Area Descriptions and Land Use Plan* section of the LUP titled "Zone 5 – Beach Boulevard to the Santa Ana River" (**Suggested Modification A.2**) and in the *Visitor-Serving Commercial Facilities* section of the LUP titled "Other" (**Suggested Modification A.6**).

Together, these suggested modifications will ensure that the hotel envisioned by the MTF Specific Plan will provide lower-cost overnight accommodations consistent with Coastal Act Sections 30210 and 30213, including if there are future efforts to amend the Specific Plan.

3. Public Access & Recreation

Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30212.5 states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Coastal Act Section 30213 states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30221 states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30223 states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Coastal Act Section 30251 states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of

surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30252 of the Coastal Act states, in pertinent part:

The location and amount of new development should maintain and enhance public access to the coast by ... (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, ... (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Coastal Act Section 30115 defines "sea" in pertinent part as follows:

"Sea" means the Pacific Ocean and all harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean, excluding nonestuarine rivers, streams, tributaries, creeks, and flood control and drainage channels.

The Coastal Act places a high priority on public access and recreation, as required by the Coastal Act sections cited above. This priority is further underscored by Section 30604(c) of the Coastal Act, which provides that every coastal development permit issued for development that lies between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include findings that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. The 29-acre MTF site is located adjacent to Magnolia Marsh, a tidally influenced body of water and therefore, the sea as defined under the Coastal Act, Section 30115 ([Exhibit 1](#)). The Huntington Beach flood control channel is located between the MTF site and Magnolia Marsh. The MTF site's location adjacent to Magnolia Marsh presents unique opportunities to provide public parks and trails with scenic coastal views. The location of the MTF site between the sea and the first public road heightens the importance of the provision of public access and recreation at the site.

Given the prominence of the adjacent wetlands, the Coastal Act requires that appropriate public access and passive recreational opportunities be provided and conspicuously posted at the MTF site. The Coastal Act gives priority to land uses that provide opportunities for enhanced public access and public recreation, particularly lower cost visitor recreational uses. Section 30221 of the Coastal Act requires that land suitable for recreational use be protected for recreational use and development, unless foreseeable future demand is already adequately provided for in the area. Section 30223 requires that upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible. Section 30210 of the Coastal Act requires that public access and recreational opportunities be provided for all people, which includes those who don't live within easy distance of the

coastal zone. Section 30252 requires that the location and amount of new development maintain and enhance public access by providing adequate parking facilities and by serving the site with public transportation. So, in addition to providing direct public access and recreational opportunities, the Commission recognizes the importance of adequate parking and encouraging alternative forms of transportation in maximizing public access to and along the shoreline.

The location of the MTF site especially lends itself to public access and recreational opportunities due to its proximity to the Magnolia Marsh and to Huntington State Beach (approximately 1 block south of the site). The proposed LUPA would change the land use designation at the site, which triggers consideration of which are the most appropriate land use designations to be applied to the site, as well as consideration of the appropriate location and extent of those land uses.

Parks

As approved by the City, the proposed LUPA would designate 2.8 acres of Open Space-Parks (OS-P) at the MTF site. The 2.8 acres would be in two locations. One OS-P area would be located on the site's east side, along its Magnolia Street frontage, within a portion of an area historically occupied by a six acre landscaped berm with many mature trees. The proposed park area would be narrower than the historic berm. This berm, locally referred to as Squirrel Park, buffered views from the former oil tank farm industrial use. Though never formally a public park, anecdotally this area has historically been used by locals for walking dogs and similar activities (see comments on the project EIR) ([Exhibit 10](#)). At 2.47 acres, the proposed OS-P park area along Magnolia Street would be considerably smaller than the existing six acre berm.

The second OS-P area is a small area adjacent to the flood control channel, between the proposed hotel site (proposed Commercial Visitor CV land use designation,) and proposed residential area (proposed Residential Medium Density (RM) land use designation) ([Exhibit 3](#)). These proposed CV and RM land use designations are located along the remainder of the site's flood control channel frontage. The flood control channel is interconnected with Magnolia Marsh, so views from the south-southwest side of the MTF site afford significant scenic coastal view opportunities of the marsh. However, only a sliver of the MTF site's marsh frontage, 0.37 acre (approximately 70 foot width), is proposed to be designated public park (OS-P). Due to the sensitive nature of the Magnolia Marsh wetlands, public access to the sea (wetlands) in this case is provided via public visual access. The limited public park area significantly constrains the opportunity to make public access via these scenic views available to the general public.

In addition, Section 30251 of the Coastal Act requires that scenic and visual qualities of coastal areas be considered and protected as a resource of public importance, and that development be sited and designed to protect views to and along scenic coastal areas. The proposed LUPA's redesignation of the land use at the site affords an excellent opportunity to consider the scenic coastal views on the site and maximize public access and recreation. These views will be available in the area of the site adjacent to Magnolia Marsh. The request to redesignate the MTF site offers an opportunity to provide public park area that would allow

public access and recreation, and public views. However, as proposed, only a slim segment of the site adjacent to the marsh will be designated for public park use, which will not maximize public access, recreation, and scenic public view opportunities, inconsistent with the Coastal Act policies cited above.

In addition, although there is extensive sandy beach area available to the public in Huntington Beach, there are few public parks in the coastal zone. There are some small parks around Huntington Harbour, the greenbelt in Sunset Beach, and parks associated with the Brightwater and Parkside developments, but none of these include views of the sea. The bluff top trail at the Brightwater development does offer ocean views. Likewise there is a public trail network throughout the Bolsa Chica Ecological Reserve located in unincorporated Orange County, which is surrounded by the City of Huntington Beach. But ocean view trails are not the same as an ocean view park. Not everyone enjoys the sandy beach or hiking, but most all would enjoy ocean views from a park. It is also important to note that all the trails and parks described just above are located in the far northern part of the City's coastal zone.

In the entire Huntington Beach coastal zone south of Seapoint Street, there is only one public park (other than the beaches): Pattinson Park located on Palm Avenue between Seapoint Street and Goldenwest Street, inland of Pacific Coast Highway. While Pattinson Park offers picnic areas, a tot lot, and large lawn area, there are no ocean views. Any potential ocean views that might be possible from this park are not available due to a block wall screening the park from adjacent oil production facilities. Even Pattinson Park is located approximately 4 miles away from the MTF site. Edison Park is located near the MTF site, but it is not in the coastal zone and has no ocean views. Downcoast of the Bolsa Chica Ecological Reserve to the City's southeastern border at the Santa Ana River, there is only one park located in the coastal zone, and none with ocean views. Thus, a park offering ocean views would be desirable in the coastal zone. Such an opportunity is presented with the proposed LUPA.

Coastal Act Section 30212.5 requires that public facilities be distributed throughout an area to mitigate against overcrowding and overuse of any single area. Coastal Act Section 30252 requires that the recreational needs of new residents not overload nearby coastal recreation areas. Currently, the City's coastal zone parks are concentrated in the northern end of the City. There are no parks with ocean views. Provision of an expanded park area along the marsh would be consistent with Section 30212.5's requirements to distribute public facilities throughout the City's coastal zone for the benefit of the public and with Section 30252's requirement that residents of new development not overload nearby recreation areas. In addition, parks are lower cost visitor and recreational facilities, which are required to be protected, encouraged, and where feasible, provided by Coastal Act Section 30213.

Moreover, Section 30221 requires that oceanfront (the MTF site is adjacent to the sea as defined in the Coastal Act) land suitable for recreational use be protected for such use.³⁰ The opportunity to enjoy coastal views from areas in addition to the beach is desirable. Moreover, providing activities and amenities in the park could serve to draw visitors from

³⁰ Section 30221 requires suitable land to be protected for recreational use unless present and foreseeable demand for such use is already adequately provided for in the area. As described, there is a dearth of parks in the Huntington Beach Coastal zone (other than the beaches).

outside the future residential and hotel development to the MTF site. The ability to stroll or sit and enjoy the views from park trails and benches, or to picnic with an ocean view, or for families to play in a tot lot while enjoying ocean breezes and views can all be provided by increasing the size of the proposed Marsh Park. The MTF site offers an excellent opportunity to provide just such amenities.

In addition, as public beaches narrow with sea level rise, additional public access recreational opportunities will become more in demand. Parks near the ocean, in addition to offering recreation, will also provide some respite from hotter temperatures inland. However, the size of the proposed OS-P area is too limited to provide such amenities or to be a visitor draw. Instead, it would effectively serve only future MTF residents and guests of the future hotel. Even then its usefulness would essentially be limited by its size to providing only the expected staging area for marsh tours for hotel guests. Members of the general public can already tour the marsh during the public tours offered from the HBWC's Visitor Center at Newland Street and Pacific Coast Highway, making the tour staging area not a significant public benefit.

The LUPA as submitted is not consistent with the Coastal Act requirement to maximize access and public recreational opportunities with new development. How 2.8 acres of OS-P was deemed the appropriate amount to serve both the recreational needs of the new residents of the MTF development as well as the needs of visitors to the coastal zone was not described in the City's submittal. The City's zoning code (also the LCP IP) Section 254.08.B OS – PR includes a formula for determining the amount of OS-P area that should be provided with new subdivisions. This formula is intended to account for the recreation needs of the new development. It does not attempt to include the broader need for public access and recreational opportunities to visitors to the coastal zone, as required by the Coastal Act sections cited above.

The MTF site borders Magnolia Marsh, affording the perfect opportunity to incorporate broader public access and recreational use when appropriately buffered from the marsh. The MTF site is located between the sea and the first public road. The Coastal Act places the highest priority for public access and recreation in this area.

Although Magnolia Marsh is visible from PCH and Magnolia Street, there currently are no public trail, benches, overlooks, picnic areas, or similar amenities from which the public may enjoy access, recreation, and views of the marsh. As proposed, there is insufficient space to accommodate these amenities in the OS-P area nearest the marsh. The proposed mixed-use development land use designations at the MTF site afford the perfect opportunity to correct this. In addition, to make the trip to the park for marsh observation more desirable, the placement of a public trail along the MTF site's border with the wetlands (outside the necessary buffer area), as well as picnic tables and tot lots, would be a good general and family draw to the area. People who may not enjoy a sandy beach could still enjoy the coast with the coastal breezes and views of the marsh that could be provided with an expanded park area along the site's boundary with the marsh.

For these reasons, the proposed LUPA is inconsistent with and inadequate to carry out the public access and recreation policies of the Coastal Act, or with the Coastal Act requirement

to maximize public access and recreation and to consider, protect, and enhance public scenic coastal views. Therefore, as proposed, the LUPA must be denied.

However, if the OS-P land use designation were expanded to encompass the entire length of the site from the CV area to the northern property line in the area adjacent to the Open Space -Conservation buffer area, it would create enough public park area so that amenities such as a public marsh view trail, marsh view seating areas, picnic areas, a tot lot, drinking fountains, marsh tour staging area, and similar amenities could all be accommodated within the expanded OS-P area nearest the marsh. **Suggested Modification A.3** requires the Marsh Park to be expanded as described and as now offered by the City and property owner. In addition, **Suggested Modification A.9** requires that proposed LUP Figure C-9a, which depicts the areas of the proposed MTF site's land use designations, be modified to reflect the larger Marsh Park area (minimum of 1.52 acres). With these changes, the LUPA would be consistent with and adequate to carry out the Coastal Act public access and recreation policies. Therefore, if modified as suggested to alter the proposed Figure C-9a to reflect the expanded OS-P land use designation to accommodate the larger Marsh Park as described above, and to reflect that change in the LUP text, then the LUPA would be consistent with the Coastal Act policies regarding maximizing public access and recreation and protecting and enhancing scenic public coastal views.

4. Sensitive Habitat

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30107.5 of the Coastal Act defines Environmentally Sensitive Habitat Area (ESHA) as:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in

an ecosystem and which could be easily disturbed or degraded by human activities and developments

In addition, the City's certified Land Use Plan Policy C 7.1.4 states:

Require that new development contiguous to wetlands or environmentally sensitive habitat areas include buffer zones. Buffer zones shall be a minimum of one hundred feet setback from the landward edge of the wetland, with the exception of the following:

A lesser buffer may be permitted if existing development or site configuration precludes a 100 foot buffer, or conversely, a greater buffer zone may be required if substantial development or significantly increased human impacts are anticipated. In either case, the following factors shall be considered when determining whether a lesser or wider buffer zone is warranted. Reduced buffer zone areas shall be reviewed by the Department of Fish and Game prior to implementation.

- a) Biological significance of adjacent lands: The buffer should be sufficiently wide to protect the functional relationship between wetland and adjacent upland.
- b) Sensitivity of species to disturbance: The buffer should be sufficiently wide to ensure that the most sensitive species will not be disturbed significantly by permitted development, based on habitat requirements of both resident and migratory species and the short and long term adaptability of various species to human disturbance.
- c) Susceptibility of parcel to erosion: The buffer should be sufficiently wide to allow for interception of any additional material eroded as a result of the proposed development based on soil and vegetative characteristics, slope and runoff characteristics, and impervious surface coverage.
- d) Use existing cultural features to locate buffer zones: The buffer zone should be contiguous with the environmentally sensitive habitat area and make use of existing features such as roads, dikes, irrigation canals, and flood control channels where feasible.

Section 30240 requires development adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade the ESHA and that the development be compatible with the continuance of the ESHA. Section 30231 of the Coastal Act requires that the biological productivity and water quality of wetlands and coastal waters to maintain optimum populations of marine organisms be maintained and, where feasible, restored by maintaining natural vegetation buffer areas (among other methods).

Magnolia Marsh is part of the larger Huntington Beach Wetlands Complex ("Complex"). The Complex is comprised of a total of approximately 137 acres of restored wetland. The Complex includes, in addition to Magnolia Marsh, Brookhurst Marsh (62 acres) and Talbert Marsh (25 acres). They are located adjacent to and inland of Pacific Coast Highway, extending from just south of the electric generating station at Newland Avenue to the Santa Ana River at the City's border. Newland Marsh, at about 44 acres, is expected to be restored

next, expanding the interconnected restored Complex. Talbert Marsh was restored in approximately 1989 – 1990 and has also been the subject of more recent restoration efforts. During its initial restoration, Talbert Marsh's ocean connection was re-established via the Talbert Ocean Inlet that runs from the marsh, under Pacific Coast Highway, across the beach and out to the ocean. Brookhurst and Magnolia Marsh were restored next in approximately 2009 - 2010. The wetlands restoration allowed seawater to propagate through the marshes and improve tidal flushing and circulation throughout the Complex and increasing the tidal prism. The Huntington Beach flood control channel runs adjacent to the inland sides of all three marshes. The southern flood control channel walls were removed when the marshes were restored, which further increased the tidal prism and the healthy function of the wetlands. There are also seven acres of coastal dune habitat within the Complex. The HBWC owns and maintains this Complex. The HBWC is a 501(c)3 non-profit organization founded in 1985 with the goal to acquire, restore, and protect the coastal wetlands of southeastern Huntington Beach.

The total loss of California's coastal wetlands is estimated at five million acres. This represents approximately 91 percent of the historic wetland acreage present before 1850.³¹ Most of the 26 remaining coastal wetlands in southern California have some protection as habitat reserves. However, all have been reduced in size and are disturbed to various degrees.³² Such wetland losses have contributed to a decline in California's wintering bird population. Avian flyway populations previously estimated at 60 million individuals now fluctuate between two and four million waterfowl and one and two million shorebirds. There has been some improvement in population counts for the Pacific Flyway as a whole, partly because of the efforts made at restoring California's coastal and inland wetlands. California's coastal wetlands also provide habitat for an array of endangered species. Wetlands produce an abundant yield of vegetation, which in turn provides the basis for a complex food chain nourishing a rich assortment of living organisms. In addition to the habitat functions they serve, coastal wetlands also help to improve water quality, protect lands from flooding, provide energy to the estuarine and marine food webs, and help stabilize shorelines against erosion and flooding. California's remaining coastal wetlands are highly valued as habitat for the multitude of species that depend on them, and as aesthetic, functional, environmentally necessary elements.

The Complex is a prime example of one of the few remaining functioning coastal salt marshes in California. These wetlands function as a home to the state-endangered Belding's savannah sparrow (*Passerculus sandwichensis beldingi*) and the federally and state-endangered light-footed Ridgway's rail (*Rallus obsoletus levipes*), both of which nest in the marsh. The federal and state-endangered California least tern (*Sterna antillarum browni*) nests at the mouth of the Santa Ana River channel and forages in the Complex. The Western snowy plover (*Charadrius nivosus nivosus*), federally listed as threatened and a CDFW Species of Special Concern, has been observed in the Complex. All of these protected bird species make extensive use of the Complex.

³¹ Wildlife.ca.gov/Conservation/Marine/Status/2001

³² <https://nap.nationalacademies.org/read/2249/chapter/9#108>

Rare native plants occurring in the Complex include: estuary seablite (*Suaeda esteroa*) a perennial shrub designated as a CRPR³³ 1B.2 species. It is found throughout the tidal portions of the Huntington Beach Wetlands; Woolly Seablite (*Suaeda taxifolia*), a perennial shrub designated as a CRPR 4.2 species; Coast Woolly Heads (*Nemacaulis denudata var. denudata*) an annual herb designated as a CRPR 1B.2; and Lewis' Evening Primrose (*Camissoniopsis lewisii*), an annual herb designated by the California Plant Native Society as a CRPR 3 species. One federally- and state-endangered plant, Salt Marsh Bird's Beak (*Cordylanthus maritimus* ssp. *Maritimus*), CRPR 1B.2 is also present in the Complex. The Huntington Beach Wetlands are one of only 7 locations where Salt Marsh Bird's Beak can be found on the West Coast.³⁴

Eelgrass (*Zostera marina*) and cordgrass (*Spartina foliosa*) are plentiful in all three marshes. Cordgrass is a food for a variety of butterflies and also provides nesting area for at least one species of endangered bird, the light-footed Ridgway's rail (*Rallus obsoletus*). Cordgrass is seriously threatened by the invasion of its non-native relative smooth cordgrass (*Spartina alterniflora*). Native cordgrass is the preferred habitat of the endangered rail. Eelgrass provides a number of important ecosystem functions as well, including foraging areas, breeding areas, protective nurseries and shelter to young fish and invertebrates, and spawning surfaces for fish, shellfish, crustaceans and other animals. Because it is a primary producer, it forms the base of a highly productive marine food web. Eelgrass meadows are one of the most important juvenile habitats for a broad array of fish species. Eelgrass beds on tidal flats hold moisture like a sponge during low tides, offering a safe, wet habitat for small creatures. Eelgrass also produces food and oxygen, improves water quality by filtering polluted runoff, absorbs excess nutrients, and stores greenhouse gases like carbon dioxide.

Other marsh plants present in the marshes include: pickleweed (*Salicornia pacifica*, a preferred nesting habitat for the endangered Belding's savannah sparrow), saltwort (*Batis maritima*, found in lower salt marsh, including mud flats), and salt marsh fleabane (*Pluchea odorata*). The uplands include coastal dune habitat and coastal sage scrub habitat consisting of native plant species that host a variety of native birds and pollinators, including lemonade berry (*Rhus integrifolia*), Menzie's goldenbush (*Isocoma menziesii*), California brittle brush (*Encelia californica*), and coyote bush (*Baccharis pilularis*). The upland areas also support narrow-leafed milkweed (*Asclepias fascicularis*), a primary host plant for the declining monarch butterfly (*Danaus Plexippus*) that provides important food resources as they overwinter in coastal California.

Magnolia Marsh, along with the rest of the Complex, supports significant types and amounts of sensitive plant and animal species and habitat that are rare and especially valuable because of their special nature or role in an ecosystem and which can easily be disturbed or degraded by human activities and developments. Thus, the Magnolia Marsh meets the

³³ CRPR (California Rare Plant Ranks) is a ranking system of the California Native Plant Society. Plants ranked CRPR 1B are rare throughout their range with the majority of them endemic to California. Most plants ranked 1B have declined significantly over the last century. Areas that support plants with a rank of 2B.1 or more rare are typically considered ESHA. These plants may be common elsewhere but are rare, threatened, or endangered in California. Plants with less rare ranks (e.g., greater than 2B.1) require greater information to properly assess rarity or are of known, limited distribution in California.

³⁴ <https://www.ochabitats.org/post/importance-of-bird-s-beak-in-the-salt-marsh>

Coastal Act definition of an environmentally sensitive habitat area (ESHA). Because the MTF site is adjacent to the Magnolia Marsh ESHA, any development on the site must be sited and designed to prevent impacts which would significantly degrade the ESHA and must be compatible with the continuance of the habitat, consistent with Coastal Act Section 30240(b).

Development can reduce and fragment habitat, which in turn reduces the quality of foraging and nesting habitats for fish and wildlife. Development can also have negative impacts on water quality and watershed health. Habitat buffers lessen the impact of human activity and land disturbance on sensitive habitats. Buffers protect wetlands and ESHA from direct human impact. Buffers protect habitat necessary for nesting and breeding, by establishing a zone of no disturbance between the habitat and development. Buffers can help remove excess nutrients from surface runoff and offer protection from invasive species. Most invasive species spread quickly in disturbed areas but spread much slower in undisturbed habitat. Buffers of sufficient width are associated with lower nest predation rates. Many factors influence the determination of a buffer width that is effective, including targeted function of the buffer (e.g., to protect nesting) and landscape characteristics like slope and vegetation. A healthy buffer can help keep invasive species out of a wetland or ESHA. While research often tends to focus on a single species, it is important that a broad multi-species approach be considered when determining buffer widths. Generally, wider buffers can support higher species abundance and diversity. In addition to reducing development impacts to habitat, buffers can themselves provide habitat and foraging for many species. It is important to the successful function of the buffer that it be vegetated with native vegetation compatible with the resource being protected.

As described earlier, the LUPA would allow new land use designations that would result in up to 250 residential units and a hotel with related accessory development at the MTF site, which is adjacent to the Magnolia Marsh ESHA. It is important to ensure that development resulting from the proposed land use designations prevent impacts on the ESHA and remain compatible with its continuance, consistent with Coastal Act Section 30240(b). It is also important to ensure that the biological productivity of wetlands be maintained, and where feasible, restored, through means including maintaining natural vegetation buffers, consistent with Coastal Act Section 30231.

The LUPA proposes a 70 foot wide Open Space-Conservation (OS-C) land use designation along the property's border with the flood control channel. This is intended to serve as an on-site buffer from the Magnolia Marsh ESHA. In this case, the area between the OS-C designated area and the Magnolia Marsh includes the 145 foot wide Huntington Beach flood control channel. In addition to the flood control channel, there is a 30 foot wide flood control channel maintenance road right of way (ROW) between the MTF site and the flood control channel. While this ROW area does not offer any habitat value, it does provide a further separation of MTF site development from the Magnolia Marsh ESHA. Altogether, the 145 foot wide flood control channel, the 30 foot wide maintenance road ROW, and the 70 foot wide OS-C designation on the MTF site, result in a distance of 245 feet that will separate MTF development from the Magnolia Marsh ESHA.

It is also worth noting that the City's and property owner's new proposal of the minimum 1.52 acre Marsh Park will be adjacent to the OS-C designated area on the inland side from the CV

area to the northern property line. Marsh Park is adjacent to the OS-C area for about half its distance. Marsh Park, while not considered a buffer for the purposes of coastal resource protection, would be a predominantly permeable area with no significant structures (just seating, tot lot, and trails type development). This assists in further separating impermeable development, such as residences and their attendant activities, from Magnolia Marsh. Inland of the OS-C area's southern stretch will be the CV area. Within the area between OS-C and CV structural development will be a 24 foot wide, permeable, public access trail/fire access road. This will set the hotel and related CV structures back further from the boundary with the OS-C area. These permeable areas will provide additional water quality benefits that further the protection of Magnolia Marsh. Moreover, as described below, lighting will be required to be sensitive to the habitat of Magnolia Marsh. Taken all together, this distance will allow adequate protection of Magnolia Marsh, consistent with Coastal Act Section 30240(b).

However, to ensure its effectiveness, it is important that the Open Space-Conservation area be planted with native plant species designed to be compatible with the continuance of the Magnolia Marsh ESHA in order to provide an effective buffer. The LUPA as proposed does not require that a Habitat Management Plan be prepared and implemented for the proposed OS-C area, inconsistent with Coastal Act Sections 30231 and 30240. However, if the LUPA were modified consistent with Suggested Modification No. A.3 to ensure that an HMP would be required for the proposed OS-C area of the MTF site, it would be consistent with Sections 30231 and 30240 of the Coastal Act regarding protection of ESHA and wetlands.

LUP Policy C 7.14

This LUP Policy states:

Require that new development contiguous to wetlands or environmentally sensitive habitat areas include buffer zones. Buffer zones shall be a minimum of one hundred feet setback from the landward edge of the wetland, with the exception of the following:

A lesser buffer may be permitted if existing development or site configuration precludes a 100 foot buffer, or conversely, a greater buffer zone may be required if substantial development or significantly increased human impacts are anticipated. In either case, the following factors shall be considered when determining whether a lesser or wider buffer zone is warranted. Reduced buffer zone areas shall be reviewed by the Department of Fish and Game prior to implementation.

- a) Biological significance of adjacent lands: The buffer should be sufficiently wide to protect the functional relationship between wetland and adjacent upland.
- b) Sensitivity of species to disturbance: The buffer should be sufficiently wide to ensure that the most sensitive species will not be disturbed significantly by permitted development, based on habitat requirements of both resident and migratory species and the short and long term adaptability of various species to human disturbance.
- c) Susceptibility of parcel to erosion: The buffer should be sufficiently wide to allow for interception of any additional material eroded as a result of the

proposed development based on soil and vegetative characteristics, slope and runoff characteristics, and impervious surface coverage.

d) Use existing cultural features to locate buffer zones: The buffer zone should be contiguous with the environmentally sensitive habitat area and make use of existing features such as roads, dikes, irrigation canals, and flood control channels where feasible.

In reviewing the LUP to assess the LCPA's consistency with Coastal Act policies, it became clear to Commission staff that the LUP policy language, as written, was ambiguous and could be interpreted in a manner that is inconsistent with Sections 30240 and 30231 of the Coastal Act.

As the LUP policy is currently written, it could be interpreted to allow development to be sited in an area that could degrade the ESHA and to allow development closer to ESHA than would be compatible with its continuance. As written, the policy might be interpreted to mean that a buffer could only be required from ESHA or wetlands if proposed development would be contiguous to the resource, even if it were closer to the resource than would be protective of it. That is, even if development were proposed within 100 feet (or within the necessary buffer distance determined by site specific requirements), it could be argued that it would have to be allowed if the development was not contiguous to the resource. This interpretation would not adequately protect the sensitive resource, inconsistent with Coastal Act Sections 30231 and 30240.

In order to address this inconsistency, the first paragraph of the policy should be modified to better carry out the requirements of Sections 30231 and 30240, which is protection of the resources and assurance that they will not be degraded by development. If modified to remove the word contiguous and restructure the language so that it focuses on protection of the resource (require new development to be located outside of the buffer zones required to protect it), the policy would then require that development be placed consistent with the necessary buffer distance required to protect the sensitive resource, whether it was contiguous to it or not. This ensures that development, such as the MTF, will be sited and designed to provide adequate habitat buffers, even if the property at issue is not contiguous with the resource.

Similarly, it became apparent when reviewing this LCPA that Subsection (d) of Policy C 7.14 is ambiguous. How cultural features should be used in determining appropriate buffer zones is unexplained. Also, what represents a "cultural" feature is unclear. The language appears to suggest that constructed features such as roads or flood control channels should play a role in determining the buffer distance needed to protect sensitive resources. But subsection (d) does not explain how these features should be used. Does the existing language mean these features should be excluded from the buffer zone? Or that the buffer distance should be taken from these features? Or something else? Most importantly, why a "cultural" feature should play any role in determining how habitat resources are best protected is not explained or supported.

The use of "cultural" features such as roads and canals should not be the basis for locating buffer zones. Buffer zones should be determined solely based on the resource to be

protected and placing development to best protect the resource and prevent its degradation. As recognized in the policy, there are sometimes constraints that may raise challenges when imposing an appropriate buffer distance. However, there is no scientific basis to use roads or canals or similar development in locating a buffer zone. In any case, this language is unclear as to how these features are to be used to determine buffer zones.

As currently written, subsection d is not most protective of sensitive resources and so is not consistent with Sections 30231 and 30240 of the Coastal Act. However, if subsection d of Policy C 7.14 were deleted from the policy it would remove the ambiguity and lack of protection created by this subsection. If not modified now, this and future projects may result in development near ESHA or wetlands that would not be most protective of the resource as required by Coastal Act policies. If subsection d were modified as suggested in **Suggested Modification No. A.8** it would be consistent with Sections 30231 and 30240 of the Coastal Act because then Policy C 7.14 would require buffers that best protect ESHA and wetlands. If modified as suggested, the LUPA policy could be found to be consistent with and adequate to carry out the ESHA and wetland protection policies of the Coastal Act.

The LUPA as proposed is not consistent with Section 30240 of the Coastal Act regarding protection of ESHA because it does not require that a burrowing owl survey be implemented prior to any ground disturbing activity on the MTF site. Without surveying for burrowing owls, the sensitive burrowing owl could be adversely affected by development. However, if the LUPA were modified as suggested in Suggested Modification No. A.3 to require a burrowing owl survey on site prior to any ground disturbing activity, and to establish a procedure to implement in the event burrowing owls are found on-site, then protection of any burrowing owls that may be present on site would be ensured, and the LUPA could be found consistent with Section 30240 of the Coastal Act regarding protection of sensitive burrowing owl habitat.

As proposed the LUPA does not require informational packets to be distributed to new residents of the MTF site and annually thereafter to inform them of the sensitive nature of the adjacent Magnolia Marsh and the habitat buffer area on-site and the impacts domestic animals and pesticides could have on it. However, if the LUPA were modified to require distribution of the sensitive habitat information packets to new residents and annually, the LUPA could be found to be consistent with and adequate to carry out Section 30240 of the Coastal Act regarding protection of ESHA from adjacent to development.

Light pollution is caused by the misuse or overuse of outdoor lighting. The nighttime environment is altered by artificial lighting from streetlights and other sources. Artificial nighttime lighting profoundly alters the timing, intensity and spectrum of natural light regimes. Artificial light at night has both been predicted and empirically determined to have a wide diversity of biological impacts on organisms' physiology and behavior, the abundance and distribution of species and the structure and functioning of communities and ecosystems.³⁵ These disruptions to wildlife and ecosystems can create lasting implications on the longevity of animal populations and the endurance of ecosystems on our planet. To avoid light pollution and the adverse impacts associated with it, nighttime lighting should only be used if needed,

³⁵ <https://www.nature.com/articles/s41467-021-24394-0>

when needed, and where needed. The color temperature of light bulbs used can also help to decrease adverse impacts of light pollution. Assuring that lights are downward directed, shielded, and lit only the minimal amount of time necessary to achieve the lighting goal is necessary to protect biological organisms in, nearby, or passing through or above the site.

DarkSky Approved is a program that provides objective, third-party certification for products, designs, and projects that minimize glare, reduce light trespass, and don't pollute the night sky. DarkSky Approved lighting is lighting that restricts the amount of upward-directed lighting, avoids glare and over-lighting, utilizes dimming and other appropriate lighting controls, and minimizes short-wavelength (bluish) light in the nighttime environment. Because the MTF site is adjacent to the Magnolia Marsh ESHA, it is important that site lighting reduce potential impacts to the ESHA to the greatest extent feasible. Certification of the site's lighting design from DarkSky International's DarkSky Approved program will help to ensure this goal is achieved.

The LUPA does not require that all on-site lighting be down-directed, shielded, and DarkSky approved, which is necessary to protect the habitat of the Magnolia Marsh ESHA from light pollution impacts. However, if the LUPA were modified to require down-directed, shielded, DarkSky Approved lighting for the MTF site, the LUPA could be found to be consistent with and adequate to carry out Section 30240 of the Coastal Act regarding protection of ESHA adjacent to development.

For the reasons discussed above, the LUPA is not consistent with Sections 30231 and 30240 of the Coastal Act, which require protection of ESHA and wetlands, and so must be denied. However, if the LUPA is modified as suggested, it would be consistent with these Coastal Act sections.

5. Environmental Justice Applicable Coastal Act Provisions

The Coastal Act explicitly identifies the need for equity and environmental justice and allows the Commission and local government to consider coastal resource issues and impacts through that lens, even when the LCP itself may be silent on such issues. The Coastal Act states:

Section 30013. The Legislature further finds and declares that in order to advance the principles of environmental justice and equality, subdivision (a) of Section 11135 of the Government Code and subdivision (e) of Section 65040.12 of the Government Code apply to the commission and all public agencies implementing the provisions of this division. As required by Section 11135 of the Government Code, no person in the State of California, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, shall be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination, under any program or activity that is conducted, operated, or administered pursuant to this division, is funded directly by the state for purposes of this division, or receives any financial assistance from the state pursuant to this division.

Section 30107.3. (a) “Environmental justice” means the fair treatment and meaningful involvement of people of all races, cultures, and incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. (b) “Environmental justice” includes, but is not limited to, all of the following: (1) The availability of a healthy environment for all people. (2) The deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities. (3) Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision making process. (4) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions. **Section 30604(h).** When acting on a coastal development permit, the issuing agency, or the Commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.

To implement its Coastal Act environmental justice authority, the Commission adopted an Environmental Justice Policy (“EJ Policy”) to guide and inform its decisions and procedures in a manner that is consistent with the provisions in, and furthers the goals of, Chapter 3 of the Coastal Act and certified LCPs. The EJ Policy further articulates environmental justice concepts, including stating:

The term “environmental justice” is currently understood to include both substantive and procedural rights, meaning that in addition to the equitable distribution of environmental benefits, underserved communities also deserve equitable access to the process where significant environmental and land use decisions are made.

Thus, the Commission’s EJ Policy underscores the importance of both substance (i.e., evaluating whether projects do or do not disproportionately distribute environmental benefits and burdens) and process (i.e., ensuring that those potentially affected by proposed development have an equitable opportunity to participate in a transparent public process). The EJ Policy also details how the Commission will work to ensure equitable distribution of benefits and burdens including access to the coast, and safeguard environmental justice communities from disproportionate impacts of climate change, water contamination, and other environmental issues.

Identifying Communities of Concern

The Commission’s EJ Policy was created to provide a framework to consider fair outcomes and requires staff to reach out to and include the voices of environmental justice community members³⁶ who have been historically marginalized in the governmental review process and whose households have been disproportionately burdened by environmental hazards often

³⁶ Coastal Act Section 30013, which provides that the Commission is to advance the principles of environmental justice and equality, references California Government Code section 65040.12(e), which defines “environmental justice” as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”

stemming from industrial development. The goal is to make sure these voices are thoughtfully considered by the Commission during the process. Staff conducted initial, focused consultation with community members and groups.

The MTF project is situated in the extensive low-lying Southeastern part of Huntington Beach, historically utilized for industrial purposes, and now transitioning towards mixed residential and commercial uses. The MTF site encompasses a 29-acre area previously used for industrial operations, including oil storage, which has left a legacy of potential soil and groundwater contaminants. The site was originally part of a larger wetlands complex but was used for agriculture from the mid-1800s through the 1960s. Between 1972 and 2013, the site supported three above-ground, 25-million-gallon tanks that stored fuel for the nearby electrical generating station. These tanks, along with other industrial developments on the site, were demolished in 2017.

Much of the housing surrounding the proposed project site consists of large two-story single-family homes, and surrounding census tracts show a predominantly white population³⁷ with a low overall composite CalEnviroScreen³⁸ score. The surrounding area is not considered low-income, as defined by AB 1550 or twice the federal poverty level.³⁹ However, according to CalEnviroScreen, the area scores in a high percentile for solid waste facilities and toxic releases compared to the rest of the state.⁴⁰

The LCPA is proposing a change in land use designation from public uses and infrastructure to a combination of residential, commercial and open space uses. A portion of the proposed housing development is to be affordable housing for a range of incomes. A certain percentage of affordable housing will be offered by right of first refusal to low-income hotel workers that will be employed by the proposed project's hotel, this is further described in Section 6. These workers, along with other potential low-income residents moving into the MTF affordable housing, are more economically vulnerable, making it challenging for these communities to cope with existing and potentially future environmental burdens.

The area is immediately inland of Orange County's flood control channel and bordered by existing industrial facilities, including the AES electrical generating station to the west and the Ascon Superfund site to the north. Farther north is also the site of a former dump that has since been turned into a park, soccer fields, skate park, tennis courts and other amenities that serve a nearby local high school, elementary school, and community, as shown in figure

³⁷ "White population" was calculated through selection of all individuals that self-identified as White and not Hispanic/Latino in ethnicity in American Community Survey 5-Year Estimates (2015-2019) pulled from CalEnviroScreen 4.0.

³⁸ CalEnviroScreen is a tool developed by CalEPA's OEHHA that generates a single cumulative impact score by combining 21 different environmental justice indicators to compare census tracts throughout the state.

³⁹ AB 1550 identifies "Low-income communities" as census tracts with median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold designated as low-income by HCD's State Income Limits. A threshold of twice the federal poverty level is typically used because California's cost of living is higher than many other parts of the country

⁴⁰ Although the overall "Pollution Burden" score in CalEnviroScreen 4.0 for the community immediately adjacent to the project site (6059099220) scored a low percentile, individual pollution indicators such as Toxic Releases and Solid Waste for the site qualify in the top 15th percentile and 25th percentile for toxic releases in California..

1. These sites have a history of toxic releases.⁴¹ During the EJ outreach for the Poseidon Desalination Facility project in 2022, nearby residents and EJ advocates referred to the entire area as the “toxic triangle”, with Magnolia Tank Farm being a part of it. Like other sites in the area, the adjacent Ascon Superfund site has a history of toxic releases. The most recent remediation effort by DTSC in 2019 was halted due to residents nearby experiencing health concerns due to hazardous volatile organic compounds (VOCs).⁴² This stopped the remediation effort and has not yet fully recommenced and the SLR vulnerability for the Ascon site in the process of being studied.

Project Site & Nearby Industrial Sites

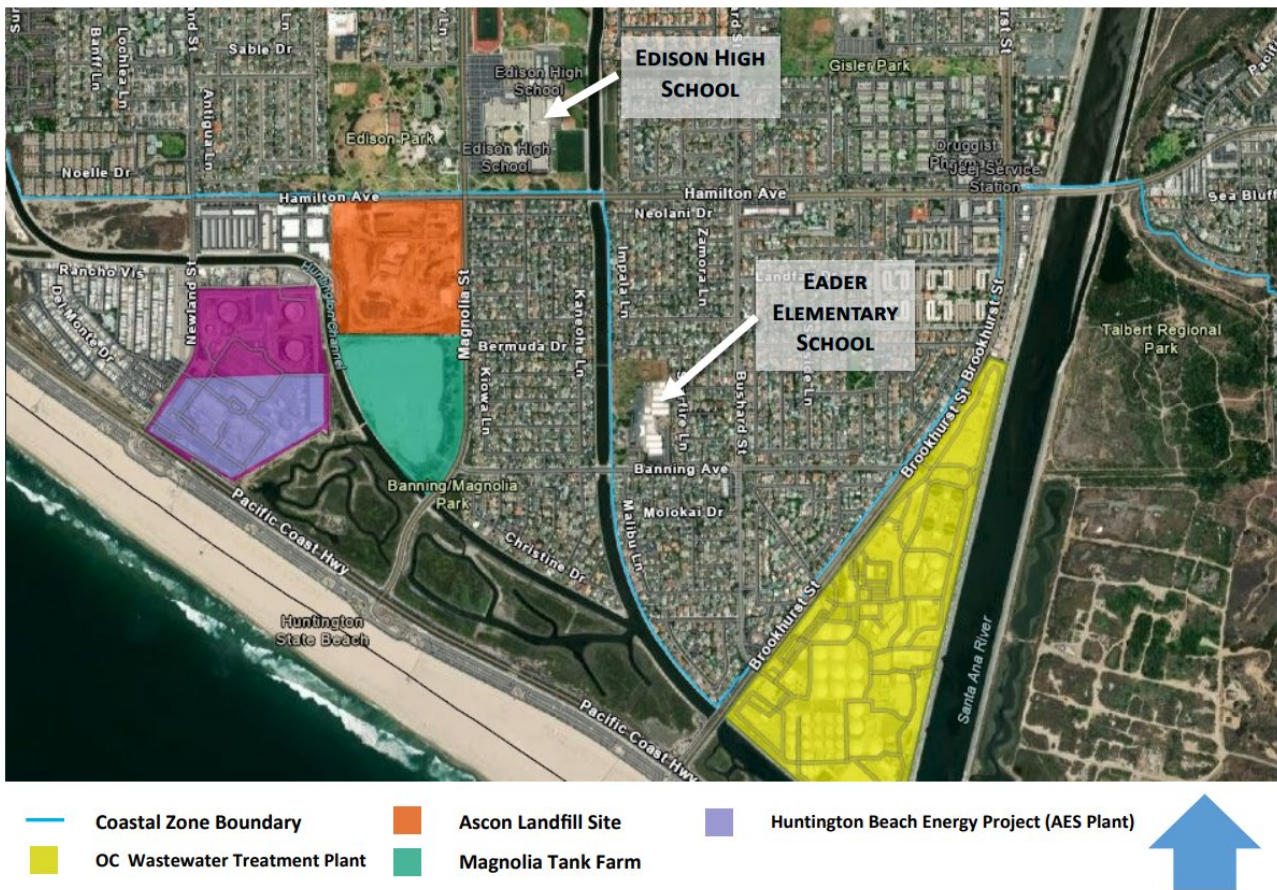


Figure 1. Project Site & Nearby Industrial Sites

Based on qualitative and quantitative information, though the surrounding community is not an environmental justice community, staff concludes that there is a potential community of concern made up of the future affordable housing residents of the project envisioned by the

⁴¹ In 2001, “[City to remove leaking methane from Edison park](#)” - Los Angeles Times (latimes.com); in 2004 “[Methane found beneath Kettler](#) - Los Angeles Times (latimes.com)”; and in 2009, “[Park area to close to vent methane from landfill](#)” (ocregister.com).

⁴² See, for example, “[Huntington Beach landfill outrage spurs school officials to address health concerns,](#)” in the Orange County Register (ocregister.com)

proposed LCPA. The region's long history of industrial use has left a legacy of contamination. The surrounding area is already disproportionately burdened by toxic sites, and, thus, potential impacts to future low-income residents, and the Commission's ability to mitigate those impacts, warrant additional consideration pursuant to Section 30604(h) of the Coastal Act.

Environmental Justice Coastal Act Analysis

Procedural Concerns: The MTF project proponents have made concerted efforts to involve the community in the planning and decision-making processes. Since August 2016, the project proponents have organized extensive outreach efforts to ensure public participation. These sessions provided in-person and virtual platforms for community members to voice their opinions, raise concerns, and offer suggestions regarding the project. Feedback collected during these sessions was documented and used to inform the project proposal, ensuring that community concerns directly influence project planning and implementation. Public participation has been facilitated through a series of public hearings and study sessions organized by the City of Huntington Beach Planning Commission, City Council, and Coastal Commission. This includes the Commission hearing on July 13, 2023, on the proposed LCPA, where, at the request of the City of Huntington Beach, the Commission voted to continue the hearing for further information. Following that vote, Commission developed an FAQ in English and Spanish to explain the decision to the public.⁴³

Substantive Concerns: Through Commission hearings as well as Commission staff outreach, public input ranges from support for the land use change and the MTF project to concerns regarding the use and siting of residences and commercial zoning in an area subject to coastal hazards. Supporters of the project argue that the proposed LCPA and planned project will help address the pressing need for housing in the area, particularly supporting low-income workers through affordable housing and guaranteed housing for hotel employees in the coastal zone. Additionally, supporters argue that the LCPA and project will increase coastal access by providing open space recreation as well as low-cost overnight accommodations—pointing to the existing state of the site as unusable by the public. Supporters note that the development includes amenities that will enhance the quality of life for current and potential residents and visitors and propose that the inclusion of affordable housing units and hotel worker housing will create a mixed-income community, contributing positively to equitable access to the coast. Section 6 Housing (below) further discusses the proposed affordable housing.

Conversely, opponents raise concerns about the project adding residential and commercial development to an area that is already experiencing disproportionate pollution. Specifically, opponents cite concerns about potential contamination from the nearby Ascon Superfund site, with residents reporting previous failures in remediation efforts. The Ascon site is in the process of being remediated, but that process was slowed in 2019 amid complaints of

⁴³ English: [The California Coastal Commission Moves to Continue the Vote for Local Coastal Program Amendment for Magnolia Tank Farm in Huntington Beach \(coastal.ca.gov\)](https://coastal.ca.gov/2023/07/13/commission-hearing-lcp-amendment-magnolia-tank-farm/) Spanish: [La Comisión hace la moción para continuar con la votación a favor de la enmienda del programa costero local para Magnolia Tank Farm en Huntington Beach \(coastal.ca.gov\)](https://coastal.ca.gov/2023/07/13/comision-hace-la-mocion-para-continuar-con-la-votacion-a-favor-de-la-enmienda-del-programa-costero-local-para-magnolia-tank-farm-en-huntington-beach/)

respiratory health issues from nearby residents. On June 6, 2019, the South Coast Air Quality Management District (SCAQMD) issued a Notice of Violation to the site due to nuisance odors, and DTSC suspended the remediation implementation work until additional monitoring and odor mitigation measures have been implemented. There are signs posted around the fenced-off Ascon site asking residents to call the SCAQMD if there are dust issues and warning that the soil contains arsenic, chromium, copper, lead, mercury, nickel, benzo(a)pyrene and dibenz(a,h)anthracene. Historical inadequacies in remediation have led to heightening concerns about future disturbances. Opponents are particularly worried for future residents on the site about the potential mobilization of contaminants from Ascon migrating to the site due to construction activities and the impact of sea level rise on contaminant spread via increased groundwater levels. As further discussed in Section 1 Hazards, DTSC has concluded that the MTF site is safe from Ascon's contamination. Moreover, pilot remediation work on Ascon began in June 2023 and was completed in October 2023. These pilot test findings will be submitted to DTSC with a restart plan and schedule, preceded by a community meeting. The Sea Level Rise Vulnerability Assessment from DTSC, however, has not concluded, and, thus, uncertainty remains on potential mobilization of contaminants.

Conclusion

The proposed land use amendment as modified would offer potential benefits, including the much-needed increase in affordable housing and lower-cost overnight visitor accommodations in the coastal zone and improvements to coastal access, particularly for future low-income residents. At the same time, it is imperative to acknowledge and address the environmental and social vulnerabilities associated with this site.

The Commission's EJ Policy underscores the necessity of integrating the perspectives and concerns of historically marginalized communities into the review process. Despite the existing surrounding community not being classified as an environmental justice community, the potential impacts on future low-income residents demand careful consideration. Though the Commission is not the primary authority for issues of air quality and the remediation of hazardous waste sites, and the Ascon site is not before the Commission, the legacy of industrial contamination and ongoing remediation efforts, particularly at the adjacent Ascon Superfund site, pose potential risks that need thorough assessment and mitigation. The community's distrust of new developments is rooted in these historical experiences, where promises of clean-up and safety were not fully realized and harmful. With increased attention by state agencies, however, there seems to be a path forward to remediate the Ascon site prior to the construction of residences in MTF. Although current data suggests that groundwater contamination is not likely to migrate to the MTF site, project opponents point to the uncertainty regarding the potential risks of sea level rise on the site, the analysis of which is not finalized by DTSC.

Remediation for Ascon is a multi-stage process with multiple checks and assessments at each stage, including a final SLR Vulnerability Assessment (SLRVA), a Remedial Action Plan (RAP), and an Operations, Maintenance and Monitoring Plan (OMMP). Ideally, the multi-stage remediation process would be concluded prior to the commencement of construction of

the MTF project. This would reduce the lingering uncertainties of building permanent housing in this area. However, the Ascon site and required remediation assessments are not before the Commission, which limits the ability to address these concerns. **Suggested Modification A.3** would require that all future owners and renters/lessees at the site receive written notification of the history and condition of the adjacent Ascon Superfund site as well as known and potential hazards related to climate change. Additionally, **Suggested Modification A.3** requires installation of passive methane mitigation systems in all habitable structures and installation of soil vapor monitoring probes at the MTF site. Finally, **Suggested Modification A.3** would require the development of a financing mechanism to help fund the MTF site's fair share of the cost of future climate change adaptations for the MTF site and broader southeast Huntington Beach area. Formation and implementation of the funding mechanism must exclude affordable housing tenants and occur prior to issuance of the first occupancy permit for the hotel or residential development, whichever comes first. These modifications help to address the uncertainty regarding potential geologic and environmental hazards at the MTF site, although there is a legacy of distrust among some members of the public that the City and the developer will need to proactively address.

6. Housing

The City proposes to amend its LUP to allow medium density residential development of up to 250 units at the MTF site. As originally submitted, the LUP did not require development of any on-site affordable units at the MTF site. Following the prior Commission hearing on the LUP on July 13, 2023, the City proposed to amend its LUP to require 20% of all residential units permitted at the MTF site to be affordable to lower income households. Of these affordable units, as proposed to be amended, 50% must be available on a first right of refusal basis to income qualifying employees of the on-site hotel.

Coastal Act Section 30604(f) requires the Commission to encourage housing opportunities for persons of low and moderate income, and Section 30604(g) declares that it is important for the Commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone. Coastal Act Section 30500.1 prohibits the Commission from requiring that LCPs include housing policies or programs. However, local governments are free to include housing policies and programs in their LCPs, as the City has done here. Additionally, many of the Coastal Act's Chapter 3 policies can support the protection and encouragement of housing, and particularly affordable housing, in infill areas, as is discussed below.

California is currently experiencing a severe housing shortage and affordability crisis. The California Department of Housing and Community Development (HCD) projects that more than 2.5 million homes must be developed over an eight-year period to meet the housing needs of California residents, and at least one million of these must be developed to meet the needs of lower-income households.⁴⁴ For context, only approximately 867,000 total units

⁴⁴ California Department of Housing and Community Development (HCD), 2022 Statewide Housing Plan, available at <https://statewide-housing-plan-cahcd.hub.arcgis.com/>.

were permitted in the state for the eight-year period of 2012-2020.⁴⁵ In light of this housing shortage, state housing law requires local governments to plan for the development of a significant amount of new housing for residents of all income levels. The City of Huntington Beach is required to plan for the development of 13,368 residential units, including 3,661 very low-income units and 2,184 low-income units, to meet the housing needs of all of its residents for the sixth cycle housing element planning period for the years 2021-2029.⁴⁶ However, only a fraction of these units have been permitted.⁴⁷ By many metrics, the cost of housing is higher in California than in any other state. The majority of California renters are cost burdened and pay more than 30% of their income towards rent.⁴⁸ This burden is felt especially acutely by lower income households and households of color. For example, 78% of extremely low-income renter households in California are paying more than half of their income on housing costs compared to 6% of moderate-income renter households, and Black renter households are 33% more severely cost burdened than white renter households.⁴⁹ The City's proposed amendments to its LUP are considered in the context of this housing crisis.

Hazards

When deciding where to locate the substantial amount of new housing that local governments must plan for, local governments must consider whether the areas identified for the development of new housing will be vulnerable to coastal hazards and SLR. Local governments should also consider the environmental justice impacts of siting housing in areas vulnerable to hazards. Historically, communities of color and low-income communities have often been relegated to areas that present the highest risk of exposure to toxins and natural hazards. These inequities persist today. Low-income households in California disproportionately live in areas that will be exposed to higher risks and types of housing that are typically less resilient to hazards.⁵⁰ Lower income renters often have reduced adaptive capacity to cope and recover from the impacts of environmental hazards like flooding due to systemic inequities and limited resources. Renters also do not control the housing units they live in and are more likely to be displaced after disasters. Climate change is expected to increase the frequency of natural hazards, such as flooding, in many areas, and SLR may cause toxins in low lying areas to spread to nearby communities. To ensure safe and equitable housing and to avoid continuing this legacy of discrimination, affordable housing

⁴⁵ HCD Annual Progress Reports Data Dashboard and Downloads, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-implementation-and-apr-dashboard>.

⁴⁶ Southern California Association of Governments (SCAG), 6th Cycle Final Regional Housing Needs Allocation (RHNA) Allocation Plan (July 1, 2021), available at <https://scag.ca.gov/sites/main/files/file-attachments/6th-cycle-rhna-final-allocation-plan.pdf?1616462966>.

⁴⁷ According to HCD's Housing Elements Annual Progress Report (APR) data, the City has permitted 996 of these units (a little over 7% of its RHNA), including 163 very low-income units and 172 low-income units, for the sixth cycle planning period. This data is available in the City's APRs and at <https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-implementation-and-apr-dashboard>.

⁴⁸ National Low Income Housing Coalition, 2023 Out of Reach Report for California, available at https://nlihc.org/sites/default/files/oor/California_2023_OOR.pdf.

⁴⁹ California Housing Partnership, California Affordable Housing Needs Report 2024, available at <https://chpc.net/wp-content/uploads/2024/03/California-Affordable-Housing-Needs-Report-2024-1.pdf>.

⁵⁰ Legislative Analyst's Office report, [Climate Change Impacts Across California Series](#), "Housing" section (2022). See also Public and Affordable Housing Research Corporation & National Low Income Housing Coalition, [Natural Hazards and Federally Assisted Housing](#) (2023) (finding that 24% of federally assisted homes are in census tracts with the greatest risk of negative impacts from natural hazards nationwide).

should be sited in areas that can accommodate it where residents will be safe and hazards are minimized, consistent with the Coastal Act.

As discussed in the hazards and environmental justice sections, the MTF site is located in a flood prone area and is vulnerable to impacts from SLR in the future, which will require future adaptation measures. There are also some unknown risks from historic contamination from the nearby Ascon Superfund site. To minimize these risks, the LUP identifies adaptation measures such as elevating the site and designating the eastern and western portions of the site as Coastal Conservation and Open Space-Parks to protect onsite development from potential flooding. The suggested modifications discussed in the hazards section require that all future owners and renters/lessees at the site shall receive written notification of known and potential hazards related to climate change and proximity to the Ascon Superfund site. This notification will ensure that all occupants, including renters, are aware of the risks associated with the site. The suggested modifications also require the development of a financing mechanism to help fund the cost of adaptation to climate change impacts, which the affordable units are exempt from needing to pay into. This will ensure that there is financing for adaptation options at the MTF site and that this financing mechanism will not adversely impact rents and costs for the affordable units in the future. Although residents of new housing may be exposed to risks from SLR in the future, these risks have been adequately minimized by the adaptation measures required for the MTF site and by the suggested modifications, consistent with the Coastal Act's hazards policies.

Public Access

A primary goal of the Coastal Act is to maximize public access to the coast, as reflected in Sections 30001.5(c), 30210, and the other public access and recreation sections of the Coastal Act. In recognition of the barrier that the shortage of affordable coastal housing presents to public access, the Commission's [Environmental Justice Policy](#) states that the Commission will work with local governments to adopt LCP policies that protect affordable housing and promote a range of affordable new residential development types.

Though the Commission has consistently used its legal authority to maximize public access, the shortage of affordable housing in the coastal zone continues to be a barrier to meaningful access to the coast for moderate- and low-income households. High costs of housing and historical exclusionary policies and practices—such as redlining, racially restrictive covenants, and single-family zoning—have limited the ability of households of color and lower-income households to live near the coast.⁵¹ California coastal communities are on average wealthier and less diverse than the state as a whole. Approximately 15% of the coastal zone is designated as a Racially Concentrated Area of Affluence—neighborhoods where residents are disproportionately white and affluent—compared to 4% statewide.⁵² Less than 0.1% of the coastal zone is designated as a Racially and Ethnically Concentrated Area of Poverty—neighborhoods where residents are largely people of color and lower-income—compared to 1.6% statewide.⁵³ Patterns of racial and economic segregation in many coastal

⁵¹ Coastal Commission [Report on the Historical Roots of Housing Inequity and Impacts on Coastal Zone Demographic Patterns](#) (2022)

⁵² HCD presentation of data analysis at the Commission's December 14, 2023 informational briefing on housing, available on [Cal-Span](#).

⁵³ Id.

communities mean that, on average, people from low-income communities and communities of color must travel further to access the social, economic, scenic, and health benefits of the coast. While coastal residency is not the sole factor in determining how easy it is to access these benefits, it does play a significant role in how likely individuals are to engage with the coast by reducing the financial and time costs of travel. Given this correlation, increasing housing equity in the coastal zone is essential to fulfilling the Coastal Act's goal of maximizing public access to and along the coast, and the State's goal of advancing environmental justice and equity.⁵⁴

In addition, both the Commission and the City have a duty under state law to administer their programs and activities relating to housing and community development in a manner that will affirmatively further fair housing.⁵⁵ Affirmatively furthering fair housing means:

[T]aking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.⁵⁶

The City of Huntington Beach and the surrounding area is no exception to historic and current patterns of segregation. For example, HCD's Affirmatively Furthering Fair Housing data viewer indicates that the City includes multiple Racially Concentrated Areas of Affluence, including directly adjacent to the MTF site.⁵⁷ The vast majority of the City is also designated as a highest resource area based on the opportunities available to residents.⁵⁸ The City's draft housing element identifies in its affirmatively furthering fair housing analysis that increasing access to high resource areas, improving job proximity for lower income households, and addressing the high cost of housing would help to address existing disparities within the City.⁵⁹ Additionally, Policy 6.5 of the draft housing element encourages a link between housing and jobs in the community, including housing opportunities affordable to

⁵⁴ See Coastal Act § 30013, stating that "... in order to advance the principles of environmental justice and equality, subdivision (a) of Section 11135 of the Government Code and subdivision (e) of Section 65040.12 of the Government Code apply to the commission...."

⁵⁵ Gov. Code § 8899.50(b)(1); *Martinez v. City of Clovis*, 90 Cal.App.5th 193 (2023). Local governments like the City are also required to affirmatively furthering fair housing in their housing elements.

⁵⁶ Gov. Code § 8899.50(a)(1).

⁵⁷ [HCD Affirmatively Furthering Fair Housing 2.0 Data Viewer](#) (2019 Racially Concentrated Areas of Affluence data).

⁵⁸ Id. (TCAC/HCD Opportunity Map 2023 data). The HCD and California Tax Credit Allocation Committee (TCAC) Opportunity Map identifies areas in every region of the state whose characteristics have been shown by research to be most strongly associated with positive economic, educational, and health outcomes for low-income families – particularly long-term outcomes for children – when compared to other neighborhoods in the same region. For additional information on the HCD/TCAC Opportunity Map see HCD's [website](#).

⁵⁹ City of Huntington Beach Draft Housing Element, Section 3: Housing Constraints, Resources, and Affirmatively Furthering Fair Housing (July 2022).

Huntington Beach's modest and lower income workforce in areas with a variety of job opportunities.

The City's current proposal to require 20% of all units permitted at the MTF site to be affordable to lower income households can help to reduce barriers to access to the coast for lower income households, consistent with the Coastal Act goal of maximizing public access. The affordable units will be located near coastal public access and recreation points, which can generally reduce the time and cost of accessing the coast for these lower income residents. Residents will be able to walk to ocean beaches located one block south of the MTF site. Magnolia Marsh, one of the restored wetlands in the Huntington Beach wetlands complex, is immediately adjacent to the south and also within close proximity to the MTF site.

Requiring affordable units in this high resource area may also forward fair housing goals by allowing lower income residents access to the amenities and opportunities available on and near the MTF site. The City's proposal to require at least half of all affordable units to be made available to employees on a right of first refusal basis also provides a further link between jobs and housing for lower income workers. At the same time, allowing affordable housing at the MTF site presents potential environmental justice concerns because it is located in an area that is vulnerable to hazards from sea level rise and potentially the nearby Ascon Superfund site. However, as discussed above, the risks from these hazards have been minimized by the adaptation measures required by the LUP at the MTF site and by suggested modifications that require renters to be notified of the hazards at the site and that require the creation of a funding mechanics for future adaptation measures. On balance, allowing medium density residential housing, including affordable and workforce housing, at the MTF site may forward state fair housing goals and is generally consistent with the public access and environmental justice policies of the Coastal Act.

Visitor Serving Uses

Certain land uses, such as visitor serving uses, are prioritized in the Coastal Act. Section 30222 prioritizes the use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry. Service industry workers that provide visitor services, such as in restaurants, hotels, and recreational facilities, are often paid relatively low wages. In many coastal areas, these lower wages can make it difficult or impossible for workers to afford housing within a reasonable distance of where they are employed.⁶⁰ Without sufficient workers for priority uses like visitor serving facilities, these industries and uses may be threatened. Encouraging or requiring that affordable worker housing be located onsite or near priority uses is one way to help ensure the continuation of these uses by making certain that employees live close enough to be able to staff the facilities that support these uses. Here, the City proposed to require that at least half of all affordable housing units be made available to qualifying hotel employees on a first right of refusal basis. This requirement can help ensure that there are adequate employees to staff the visitor serving uses planned for the site

⁶⁰ Evelyn Blumenberg & Madeline Wander (2023) Housing affordability and commute distance, *Urban Geography*, 44:7, 1454-1473, DOI: 10.1080/02723638.2022.2087319.

and is also aligned with the Coastal Act goal of prioritizing visitor serving uses and promoting public access to the coast for visitors.

Minimization of Vehicle Miles Traveled

Section 30253(d) of the Coastal Act requires new development to minimize energy consumption and vehicle miles traveled. At the land use scale, minimizing energy consumption and vehicle miles traveled goes hand in hand with the concentration of development. Section 30250(a) of the Coastal Act generally requires new development to be located within, contiguous with, or in close proximity to, existing developed areas with adequate existing services. These policies together encourage “smart growth” by locating new development in areas that will minimize impacts on coastal resources and by discouraging residential sprawl in more rural or sparsely populated areas that are not adequately developed to support new residential development and where coastal resources could be threatened.⁶¹ Here, the City is required to plan for the development of over 13,000 new residential units over the course of eight years. The MTF site would provide several hundred of these units and is located within an existing developed area adjacent to other residential development, and relatively close to restaurants, grocery stores, and other opportunities. The City also proposes to require at least half of all affordable units be made available to hotel employees on a right of first refusal basis. This workforce housing can reduce vehicle miles traveled, consistent with Coastal Act Section 30253(d), by providing onsite housing for workers who would otherwise likely have long commutes in order to afford housing.

In sum, the City’s proposal to allow medium density residential use at the MTF site and to require a substantial portion of these units to be affordable and available to employees, as reflected in the suggested modifications to the Specific Plan, aligns with many policies of the Coastal Act, including those relating to environmental justice, public access, visitor serving uses, concentration of development, and minimization of vehicle miles travelled.

7. Misc. Suggested Modifications Needed

The LUP includes Table C-2 (Community District and Sub Area Schedule) which includes alpha-numerically identified sub-areas for areas within the City’s coastal zone with unique needs and requirements. Currently the MTF site is located in sub-area 4G Edison, due to its former use as an oil tank farm that served the electric generating station. The LUPA appropriately proposes to remove the MTF site from sub-area 4G as it no longer serves the generating station. But it does not propose to add the MTF site as a new sub-area on Table C-2.

Table C-2 identifies the permitted uses, density/intensity, and development and design for each sub-area. Specific sub-area requirements are further expanded upon under the heading “Standards and Principles.” The proposed LUPA would allow new residential, hotel and hotel related commercial development in an area adjacent to an ESHA, that is potentially

⁶¹ The Commission’s [Smart Growth Planning & Permitting in the Coastal Zone Memo](#) has additional information on how “smart growth” strategies and the Coastal Act intersect and includes examples of LCP and CDP decisions that embody smart growth strategies and are consistent with the Coastal Act.

susceptible to future climate change hazards, and that is adjacent to the Ascon superfund site. In addition, through the related Specific Plan, the property owner is offering to include with future MTF development the following: 25% of the future number of hotel rooms at the site will be lower cost; 20% of the future residential units will be on-site affordable units (including offering 50% of the affordable units to income qualifying on-site hotel employees); and public benefits including, among other things, public parks and trails. In addition, requirements generated by the new land use designations need to be included in new sub-area 4L of Table C-2. These include the need for: an HMP for the OS-C area; a Transportation Demand Management Plan for the CV area; a Protection of Archaeological and Tribal Cultural Resources Plan prior to any ground disturbing activities; an Outreach Program for the Magnolia Marsh tours and programs; a Public Access & Recreation Signage Plan; Burrowing Owl Surveys; a Water Quality Management Plan; MTF homeowners Information Packets; and a Lower Cost Accommodations Marketing and Engagement Plan. In addition, Covenants, Conditions & Restrictions (CC&Rs) will be required in conjunction with residential development to ensure the public amenities are provided and maintained and to preclude future adverse impacts to public access. An Assessment District for climate change adaptations, must be formed for MTF development allowed by the LUPA. And all future owners and renters/lessees of the site must receive notice of the history and condition of the Ascon site and possible climate change impacts to the site prior to committing to a home purchase or rental/lease agreement. These needs are generated by the proposed land use designation changes. Each of these unique elements and requirements related to the MTF site must be included as a new sub-area in Table C-2, and the unique needs and requirements of the site must be identified there. As proposed, the proposed LUPA does not include any changes to Table C-2.

In response to discussions with City staff, they suggested adding new sub-area 4L to Table C-2 for the MTF site. Some language has been suggested by City staff to be applied to the new sub-area 4L. However, the language suggested by City staff does not adequately encompass all the unique factors present at the MTF site, including as mentioned above, that it is adjacent to ESHA, the climate change hazards, its proximity to Ascon, as well as the public benefits to be provided at the MTF site. All of these must be described in the sub-area 4L section of Table C-2 to assure that all concerns are addressed at the time future CDPs are requested for development that would be allowed at the MTF site by this LUPA. **Suggested Modification A.3** adds these requirements to Table C-2 in order to ensure that the LUPA is consistent with the Chapter 3 policies of the Coastal Act.

The LUPA proposes a modification to Figure C-10 which depicts the locations of each of the Table C-2 sub-areas ([Exhibit 2g](#)). The LUPA appropriately proposes to delete the MTF site from sub-area 4G on Figure C-10. However, the LUPA does not propose adding a new sub-area to Figure C-10 specific to the MTF site. The proposed LUPA does propose to add new Figure C-9a, which depicts the land uses allowed on the MTF site pursuant to this LUPA ([Exhibit 2e](#)). The LUPA also proposes to modify existing Figure C-9, which is the Land Use Plan for Zone 5 of the City's coastal zone, which include the MTF site. The LUPA would delete the reference to the current land use designation at the site, and instead refer to Figure C-9a, which would depict the proposed OS-P, OS-C, CV, and RM3 land use designations instead ([Exhibit 3](#)). However, since the City's approval of the LUPA, City staff and the property owner have requested that the areas of those land uses be modified to

reflect changes now offered by the property owner. These changes include expanded OS-P land use designated area and the related reduced RM land use designated area, while retaining the OS-C and CV land use designated areas in the same size and location.

Area descriptions in the LUP will need to be updated to accurately reflect the changes made to the LUPA. For example, the description of Zone 5 within the City's coastal zone will need to be updated to reflect the new land use designations within Zone 5 consistent with the LUPA as modified. Likewise, LUP Tables that list parks and parking spaces located in the coastal zone will need to be updated to reflect the addition of two parks and many new public parking spaces resulting from the LUPA. These modifications are suggested in **Suggested Modification Nos. A.4, A.5, and A.6.**

In addition to adding new sub-area 4L to Table C-2 of the LUP, any other areas of the LUP not specifically referenced, including additional LUP maps, figures, and text may be changed as necessary to accurately reflect the location and area acreages of the expanded OS-P land use designation, while retaining the CV and OS-C area acreages of the LUPA, and the related reduction in the area acreage of the RM land use designation, as well as other changes generated by the LUPA as modified. Staff has attempted to identify these areas in the suggested modifications, but there may be additional areas in the LUP that will need to be changed based on the LUPA as modified, to maintain consistency throughout the LUP. This modification would allow for that.

To adequately capture all the unique elements and requirements of the MTF site and to accurately reflect the areas of the proposed land uses on the LUP maps, the LUPA must be modified as suggested. This includes adding new sub-area 4L to Table C-2 with detailed descriptions related to the MTF site uses, and modifying LUP Figures including modifying Figure C-10 to reflect new sub-area 4L, and modifying proposed Figure C-9a to accurately reflect the proposed land use designation areas as modified.

LUPA Conclusion

For the reasons described above, the LUPA as proposed is inconsistent with various policies of the Coastal Act regarding hazards, lower cost visitor facilities, public access and recreation, and protection of sensitive resources and therefore must be denied. However, if the LUPA were modified as suggested in **Suggested Modification No. A.3** regarding new sub-area 4L and the related changes to the LUP maps in additional suggested modifications, the LUPA could be found to be consistent with and adequate to carry out the Coastal Act. Therefore, only if modified as suggested, can the Commission find the LUPA consistent with and adequate to carry out the Coastal Act.

D. FINDINGS FOR DENIAL OF THE IPA as submitted and approval if modified

The standard of review for LCP IP amendments is whether the IP as amended, will conform with and be adequate to carry out the provisions of the certified LCP LUP. Many LUP policies mirror policies in the Coastal Act that were discussed above. The LUP policies that are most applicable to the proposed IP Amendment are cited below.

The IP, if amended as originally proposed by the City, would not conform with and would not be adequate to carry out the LUP policies that require minimization of hazards and risk, promotion of maximum public access, recreation and visitor serving uses, especially lower cost use, or protection of sensitive resources. The following findings describe how the proposed IP, if amended as proposed, would not conform with and would not be adequate to carry out the policies of the LUP. These findings also describe how, if the IP Amendment (IPA) were modified as suggested, it would conform with and be adequate to carry out the policies of the LUP, as amended.

1. LUPA Findings

The preceding findings for denial of the LUP amendment as submitted and approval if modified as recommended are incorporated as though set forth herein.

2. Hazards

The certified LUP includes the following hazard and risk reduction and drainage infrastructure, policies:

C 1.1

Ensure that adverse impacts associated with coastal zone development are mitigated or minimized to the greatest extent feasible.

Goal C 10

Minimize risks to life and property in areas of high hazards (e.g., geologic, flood and fire) within the Coastal Zone and ensure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

C 10.1

Identify potential hazard areas in the City and manage/mitigate potential risks and impacts through land use regulation, public awareness and retrofitting where feasible.

C 10.1.2

Promote land use patterns, zoning ordinances and locational criteria that mitigate potential risks posed by development in hazard areas, or which significantly reduce risk from seismic hazards.

C 10.1.14

During major redevelopment or initial construction, require specific measures to be taken by developers, builders or property owners in flood prone areas (Figure C-33) to prevent or reduce damage from flooding and the risks upon human safety.

Development shall, to the maximum extent feasible and consistent with the Water and Marine Resource policies of this LCP, be designed and sited to:

- a) Avoid the use of protective devices,
- b) Avoid encroachments into the floodplain, and
- c) Remove any encroachments into the floodplain to restore the natural width of the floodplain.

C 1.1.9

Minimize risks to life and property in areas of high geologic, flood (Figure C-33) and fire hazard through siting and design to avoid the hazard.

New development shall be designed to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in anyway require the construction of a protective device.

C 1.2

Provide a land use plan that balances location, type and amount of land use with infrastructure needs.

C 6.1.7

Improve and maintain existing infrastructure to prevent sewage system failures that may result in the discharge of untreated sewage into coastal and ocean waters. Regular inspection of sewer lines, pump stations and preventative maintenance activities shall be undertaken to minimize the potential for ruptured lines or faulty infrastructure to cause or contribute to a sewage spill. The City shall implement management measures for its systems to prevent sewage spills, and other causes of bacterial pollution in coastal waters in response to scientific findings and recommendations resulting from monitoring and other investigations.

C 9

Provide water, sewer and drainage systems that are able to support permitted land uses; upgrade existing deficient systems; and pursue funding sources to reduce costs of wastewater service provision in the City.

C 9.1

Provide and maintain water, sewer and drainage systems that adequately serve planned land uses at maximized cost efficiency.

I-C 10(b)

Allow for the formation of benefit assessment districts and/or undertake municipal bonding programs for the maintenance and construction of water supply and distribution, sewage collection and treatment, street and storm drain systems and facilities.

The subject site is located within a historically flood prone area, and the current risk will increase with coming climate change impacts including SLR, groundwater rise, and increased flooding. More detail on the extent of these impacts is discussed in the findings for the LUPA.

The City proposes to amend its IP by changing the zoning at the MTF site to allow for a mixed-use project that will include up to 250 residential units. The City also proposes to amend its IP to add the MTF Specific Plan, which provides a more detailed vision and standards for the residential units.

Policy C 10.1 requires that risk and impacts in identified hazard areas be managed and mitigated through land use regulation and public awareness where feasible. As proposed, Appendix B of the Specific Plan addresses coastal hazards at the MTF site. Appendix B references information that was identified in the 2021 SLR VAAP. Further it notes that an adaptation plan for the MTF site was developed using information from the Coastal Commission's 2015 SLR Policy Guidance. It does not reference the most recent 2024 SLR study. As such, Appendix B, as proposed, does not reference the most updated data related to SLR and does not conform with the LUP. Thus, **Suggested Modification B.5 to Specific Plan Volume I, Appendix B** is needed to require replacement of the entire Appendix B with the 2021 SLR VAAP and the 2024 Study. This ensures that the most up-to-date information regarding potential hazards for this area will be added to the City's IP and will be used to implement the SLR policies and standards identified in the Specific Plan.

Policy C 10.1.2 promotes the use of land use patterns that mitigate risks in hazard areas. Policy C 10.1.14 requires specific measures be taken in flood prone areas to prevent or reduce damage from flooding. Policy C 1.2 requires the land use plan to balance location, type and amount of land use with infrastructure needs. This policy specifically refers to Figure C-33 which identifies flood prone areas of the flood hazard zone in Huntington Beach. Figure C-33 ([Exhibit 8](#)) identifies the subject site and surrounding area as being in a flood hazard area. Policy C 1.1.9 requires that new development be designed to be safe from hazards and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in anyway require the construction of a protective device. Policy C 6.1.7 requires regular inspections of sewer lines, pump stations and preventative maintenance to be undertaken. Policies C 9 and C 9.1 require that the City provide drainage systems, including upgrading deficient systems, that adequately support permitted land uses (e.g., existing development). Policy I-C 10(b) calls for the formation of an assessment district for the maintenance and construction of water infrastructure, including storm drain systems and facilities.

A **Suggested Modification** to add Section 3.14 to Specific Plan Volume I, would add a new section on Policies/Regulations Regarding Sea Level Rise to the Specific Plan. This new section would reference the studies included in Appendix B, and lay out specific provisions and adaptation measures to guide development of the site to ensure that it is not subject to

flooding from SLR and to minimize risks from coastal hazards to the site and coastal resources. The **Suggested Modification** adding new **Section 3.14** to Specific Plan Volume I, includes subsection 3.14.1, which identifies policies for addressing SLR in the entire Southeast Huntington Beach area. These policies require the City to continue monitoring SLR and update the policies in the Specific Plan as necessary to incorporate the most recent best available science on sea level rise. Subsection 3.14.1 also requires the property owner or developer, in coordination with the City, to develop a financing mechanism that would fund the property's fair share of the cost to implement SLR adaptation measures identified in the 2024 SLR study. The same **Suggested Modification** also includes subsection 3.14.2, which identifies policies for addressing SLR within the MTF site. These policies require a number of adaptation measures that shall be implemented at the time of initial project construction, including raising the elevation of the site and installing tide gates to the Huntington Beach Channel to prevent flows within the channel from entering the project storm drain, as well as a requirement that the City will develop an Adaptation Plan within 10 years from the date of Specific Plan certification that will detail priority adaptation measures for the site and adjacent areas and timeline for implementation. Subsection 3.14.2 also requires that an acknowledgement of the assumption of risk shall be recorded for all permittees and memorializes that the property owner is not entitled to construct any shoreline protection device to protect this site in the future. Lastly, subsection 3.14.2 requires that occupants of the home receive written notification that the development is located in a hazardous area subject to flooding, extreme precipitation, groundwater rise, tsunamis, and other hazards, and that adaptation strategies, up to and including removal, may be required to address future SLR.

A **Suggested Modification** to add new Section 3.4.7 to Specific Plan Volume I, requires the inclusion of the coastal hazards notice for future occupants described in subsection 3.14.2 to be included in the establishment of the Covenants, Conditions, and Restrictions (CC&Rs) for a Homeowners' Association and Private Property Owners' Association.

In addition, a **Suggested Modification** adds new Section 3.6.3 Detection Systems & Methane Mitigation Measures requires installation of passive methane mitigation systems in all habitable structures at the MTF site. Another **Suggested Modification** adds new Section 3.6.6 Notification for Superfund Site requires that all future property owners and renters/lessees at the MTF site be provided with written notice of the toxic condition and history of the adjacent Ascon Superfund site. The notice is required to be written in plain language and available in both English and Spanish. Samples of the notice are required to be submitted with the application for any coastal development permit for residential or commercial development on the MTF site.

The South Branch fault crosses the MTF site. It is considered inactive with an unknown but likely very low risk of fault rupture. The South Branch fault trace is classified by the City of Huntington Beach as a Category C fault, which requires special studies including a subsurface investigation for critical and important land use. A more detailed site specific geotechnical investigation is needed to fully evaluate the potential for surface fault rupture and displacement at the site to determine appropriate strategies for avoiding and minimizing the hazard. At locations underlain by poorly consolidated materials, such as the alluvial fan and lagoonal deposits and artificial fill that under lie much of the MTF site, ground shaking is

likely to be amplified. A site specific probabilistic ground-shaking analysis will be necessary in order to inform project design and conform to the California Building Code. A **Suggested Modification** adds new Section 3.6.8 Seismic Hazards Investigations which requires that a site specific, design level Seismic Hazards Investigation be submitted with any CDP application for development on the MTF site. The Seismic Hazards Investigation is required to include a detailed evaluation of the potential for a surface fault rupture and/or ground displacement as a result of an earthquake on the South Branch Fault. The suggested modification requires that final project design, including foundation and ground improvement plans, be informed by and incorporate the recommendations of the Seismic Hazards Investigation.

Saline Environment

Historically, the site was part of the larger wetland complex associated with the Santa Ana River outlet. The MTF site is adjacent to the tidally influenced Magnolia Marsh and is within approximately 1300 feet of the ocean. Groundwater at the MTF is subject to fluctuations related to the tides. The level of the groundwater on site will increase with future SLR. This means that the MTF site is a high saline environment. A high saline environment is a condition where high concentration of soluble salts are present. Soil salinity affects soil properties, which is generally manifested in changes in swelling potential, hydraulic conductivity and soil permeability. Hazards associated with groundwater rising to elevations near the surface include damage to roads, underground pipelines and utilities. The proposed Specific Plan requires the undergrounding of all utilities. In addition, roadbeds and underground pipelines will come in contact with the high saline environment. Saline environments have corrosive effects on such development. In addition, though currently not the design standard for coastal zone development, if future SLR elevations were to reach the Extreme Risk Aversion levels identified in Appendix G of the Commission's Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits (8/12/2015, updated 11/7/2018), subterranean structures could be at risk.

According to the proposed Specific Plan, the negative effects of the high saline environment will be addressed to some extent by the addition of fill onto the site, raising it above current elevations by approximately 10 - 12 feet (as described previously). However, supporting development allowed by the proposed Specific Plan, such as underground utilities and pipelines, and roads, would still be susceptible to the adverse effects of the MTF site's high saline environment, especially with expected future SLR. The proposed Specific Plan requires the undergrounding of all utilities and allows roads and other infrastructure, but does not require that the undergrounded utilities, roads and other infrastructure be waterproofed and designed to withstand corrosion associated with the high saline environment of the MTF site. Measures to address the adverse effects of this environment include, but are not limited to, appropriate concrete admixtures for roads and wrapping for utilities and pipelines. Because these measures are not required in the proposed Specific Plan, it is inconsistent with the LUP policies that require that risks to life and property be minimized.

Subterranean Structures

As proposed, the Specific Plan would allow subterranean structures. To increase the future safety of development and residents of the MTF site by addressing possible future extreme

events possibly driven by climate change, as well as by the site's proximity to the Ascon site and possible impacts that might arise from that proximity (though currently none are known to be expected), subterranean residential structures should be prohibited. A subterranean parking garage may be allowed only in the CV zone, however, where the potential for flooding or damage to such a structure will not create the same danger to human lives as subterranean structures associated with residences. With this abundance of caution, an extra layer of protection for residential development at the MTF site will be in place. This added safety precaution is consistent with the LUP hazards policies.

Detection Systems and Methane Mitigation Systems

As discussed earlier, the MTF site is located immediately adjacent to the Ascon State superfund site. Although the Commission is unaware of specific current hazards caused by the site's proximity to Ascon, if issues are identified in the future, some measures may be required to ensure the safety of the residents and visitors at the MTF site. Toward that end, an additional setback from the north property line, which borders Ascon, would allow accommodation of soil vapor monitoring probes, and/or other features deemed appropriate in the future to mitigate any pollutants or other harms associated with Ascon. Though not included in the Specific Plan as proposed, the property owner has offered to include installation of soil vapor monitoring probes on the MTF site along its boundary with Ascon prior to issuance of a CDP for any residential or commercial development. These soil vapor monitoring probes are intended to detect vapors from the Ascon soil before they arrive in developed areas of the site. Although not expected, if such vapors are present at some point in the future, these monitoring probes would provide early detection.

Also offered by the property owner and proposed by the City, though not included in the proposed Specific Plan, are passive methane mitigation systems, to be installed in all habitable structures and in all allowable subterranean structures on the MTF site. This system will need to comply with the Huntington Beach Fire Department's City Specification No. 429 (reference to Huntington Beach Fire Code Sections 17.56.070, 17.56.110, and 17.56.520). ([Exhibit 7](#))

The potential hazards discussed above are not addressed in the Specific Plan as proposed. It may become necessary to implement climate change and/or Ascon related adaptations at the site as necessary to address hazards due to either or both of these sources. As proposed, the Specific Plan does not include climate change or Ascon adaptations or measures as an allowable use on the MTF site. This is inconsistent with LUP Policies C 1.1.9 which requires that risk to life and property be minimized. However, if modified as suggested at Specific Plan Section 3.5 Permitted Uses to include adaptations related to climate change or proximity to Ascon, the Specific Plan would be consistent with LUP Policy C 1.1.9.

Notification

Because of its proximity to the Ascon State superfund site, future MTF residents should be made aware of that site's toxic nature and history. Likewise, future residents should be made aware of the potential future threat to the MTF site from sea level rise and fluvial flooding. These notices should be provided to all future owners and renters/lessees. A suggested modification would add new Specific Plan Section 3.6.6 and Section 3.14.2 which requires such Notification.

Assessment District

Finally, adaptation measures are reasonably likely to be needed in the future to address hazards from climate change. It is important that the development that would be allowed pursuant to the Specific Plan has a means in place to fund necessary future adaptations when needed to minimize likely future hazards. The need for an assessment district or similar financing mechanism to fund future adaptations should be recognized now, and included in the proposed Specific Plan that would allow the future development of the MTF site. Modifications are suggested at Specific Plan Section 3.6.5 and Section 3.13.1, to require an assessment district to ensure that there is funding for adaptation measures needed to respond to impacts from future SLR.

Hazards Conclusion

In conclusion, the suggested modifications described above are necessary to ensure that development standards established in the MTF Specific Plan are sufficient to effectively carry out the hazards policies of the certified LUP. As proposed, the Specific Plan does not adequately address hazards as described above. As such the proposed Specific Plan is not consistent with the hazards policies of the LUP and so must be denied. However, if modified as suggested, the Specific Plan would adequately address these LUP policies and can be approved.

3. Lower Cost Overnight Accommodations

The relevant policies of the City of Huntington Beach LUP include:

Goal C 2: Provide coastal resource access opportunities for the public where feasible and in accordance with the California Coastal Act requirements.

Objective C 2.7: Promote public awareness of existing access opportunities to coastal resources.

Goal C 3: Provide a variety of recreational and visitor commercial serving uses for a range of costs and market preferences.

Objective C 3.2: Ensure that new development and uses provide a variety of recreational facilities for a range of income groups, including low cost facilities and activities.

Policy C 3.2.2: Lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. On oceanfront, waterfront or nearshore areas or lands designated for visitor uses and recreational facilities, an assessment of the availability of lower cost visitor uses shall be completed at the time of discretionary review and an in-lieu fee in an amount necessary to offset the lack of the preferred lower cost facilities in or near Huntington Beach shall be imposed.

The City proposes to amend its IP by changing the zoning at the MTF site to allow for a mixed-use project that will include market rate and lower-cost overnight accommodations. The City also proposes to amend its IP to add the MTF Specific Plan, which provides a more detailed vision and standards for the overnight accommodations. The Specific Plan notably recognizes the Coastal Act's requirement for providing a range of overnight accommodation options and acknowledges the opportunity available at the MTF site to comply with this requirement.

As proposed, the Specific Plan envisions the market rate rooms in a single 230,000 square foot building called the Lodge, while the lower cost rooms are envisioned in a more family/group friendly, budget-oriented building called the Guesthouse. The Specific Plan would also allow all rooms to be provided in a single, integrated facility. While the Specific Plan makes references to the Lodge and the Guesthouse separately, it also makes general references to "the hotel" in a manner that raises concerns about what amenities would be available to the Lodge guests versus the Guesthouse guests. As such, suggested modifications to Specific Plan Volume I and II require universal replacement of the terms "Lodge" and "Guesthouse" with "hotel." To ensure that the lower-cost room guests are treated to an inclusive, equitable experience comparable in quality to those of the market rate guests, whether these rooms are provided in the same or in separate facilities, a suggested modification to Specific Plan Volume I, Section 3.12.1 states a preference for a single facility and requires that, in either case, the guests of the lower-cost rooms shall have access to all the same hotel amenities as the guests of the market rate rooms. Without these suggested modifications, the proposed Specific Plan could not be found consistent with the public access and visitor-serving policies of the LUP, which require a variety of recreational facilities for a range of incomes and requires the provision of lower cost recreational facilities.

As described above in Section III.C.2 of these findings, suggested modifications are also necessary to carry out the City's proposal to include a certain percentage of lower-cost rooms. This proposal, and the modifications that implement it, will make the LUP amendment consistent with Sections 30210 and 30213 of the Coastal Act with respect to the proposed ratio of market rate and lower-cost rooms and the proposed methodology for determining what constitutes lower-cost accommodations. These same concerns apply to the proposed Specific Plan to ensure consistency with the LUP, as modified. Thus, in order to ensure that the Specific Plan conforms with the modified LUP, a suggested modification to Specific Plan Volume I, Section 3.12.1 clarifies that the hotel will provide up to 215 rooms, and that at all times throughout the operational life of the hotel, a minimum of 25% of the rooms shall be offered as lower-cost accommodations.

Suggested modifications to Specific Plan Volume I, Section 3.12.1 also provide a more detailed methodology for defining lower-cost room rate thresholds to effectively carry out the LUP, as modified. Specifically, this modification would establish the lower-cost room rate threshold at no more than 75% of the statewide peak season ADR for the calendar year prior to the opening of the facility to the public. To ensure this maximum rate remains truly lower

cost and to ensure consistency with Senate Bill 478 (Dodd),⁶² the modification clarifies that lower-cost room rates shall be inclusive of all service and other fees (e.g., parking cleaning, resort, administrative) but exclusive of any government mandates fees (e.g., sales tax, transient occupancy taxes). The modification allows adjustments to the lower-cost room rate threshold based on occupancy (up to 10% per each additional guest beyond two guests) and based on inflation (allowed once annually at an amount no more than the increase in the California Consumer Price Index for Urban Consumers). Lastly, this modification states that these standards for defining lower-cost room rates must be set as a condition of approval for any CDP that permits development of this future hotel.

Also as described above in Section III.C.2 of these findings, provision of lower-cost overnight accommodations is a critical component to advancing environmental justice and maximizing coastal access for environmental justice communities. The certified LUP requires provision of coastal resource access opportunities for the public, where feasible, and in accordance with the Coastal Act, and requires promotion of public awareness of such opportunities. Thus, to ensure that environmental justice communities (such as lower-income communities, communities of color, and other communities that have been historically marginalized and face greater barriers to coastal access) are made aware of this lower-cost opportunity to access and recreate on the coast as required by the standard of review, another suggested modification to Specific Plan Volume I, Section 3.12.1 requires a Lower Cost Accommodations Marketing and Engagement Plan. The modification describes the minimum requirements of the Marketing and Engagement Plan, such as a description of all proposed advertising methods and mediums, the audiences being reached, the proposed methods for reaching non-English speaking communities, and the proposed methods for tracking successful implementation of the Plan, all with the goal of reaching as many potential users as possible. The modification also clarifies that the Plan requires review and approval by the approval authority as a prior to issuance condition for any CDP that permits development of the hotel.

To ensure that the marketing and operation of the lower-cost rooms are occurring in compliance with the Specific Plan, another suggested modification to Specific Plan Volume I, Section 3.12.1 requires annual reporting to the approval authority. The modification describes the minimum information to include in the annual reports, such as the lower-cost rates, occupancy rates, and samples of outreach materials. As the annual reports provide an opportunity for re-evaluation and adjustments to the Marketing and Engagement Plan to maximize public awareness, the reports must also include any recommendations for additional and/or modified outreach measures. This modification also states that the annual reports must be set as a condition of approval for any CDP that permits development of this future hotel, and that every fifth such report shall also include an audit performed by an independent auditing company evaluating compliance with this permit condition.

⁶² [SB 478 \(Dodd, 2023\)](#) takes effect on July 1, 2024 and makes it unlawful to offer a price for a good or service that does not include all mandatory fees or charges other than taxes or fees imposed by a government on the transaction.

A final suggested modification to Specific Plan Volume I, Section 3.12.1 addresses the timing of making both the lower-cost and market rate hotel rooms available to the public. As proposed, the Specific Plan states that the “market rate rooms and lower-cost rooms must be available for use by the public prior to issuance of the 200th occupancy permit within the residential planning area (PA 3).” While this language helps to ensure that this priority commercial visitor-serving use will be provided at an appropriate stage of the site’s development, it does not prevent the possibility of the market rate rooms taking precedent and becoming available before the lower-cost rooms. The certified LUP, as modified, requires new development to provide a variety of recreational facilities for a range of income groups and requires provision of lower-cost visitor and recreational facilities where feasible. As such, this provision of the Specific Plan cannot be found consistent with the public access and visitor-serving policies of the LUP. In addition, the reference to the 200th residential occupancy permit creates an inconsistency with Section 4.11 of the Specific Plan titled *Phasing, Financing and Maintenance of Improvements*, which states that the hotel shall be open to the public prior to issuance of the 175th residential occupancy permit. Following discussions amongst the City, property owner, and Commission staff, the City now proposes clarifying that the lower-cost rooms shall be available to the public concurrent with the market rate rooms and referencing the 175th residential occupancy permit to correct this inconsistency. Suggested modifications to Specific Plan Volume I, Section 3.12.1 codify these proposed changes.

Transportation Demand Management Plan

A hotel use, like the one that would be allowed pursuant to this proposed LCPA, would generate demand for transportation both by guests and employees. The Commission historically promotes public access by assuring that new development provides enough parking to serve the use, to ensure, among other things, that residents do not displace public parking spaces that would otherwise be available to coastal visitors. This remains an important factor in assuring maximum public coastal access. In addition to providing adequate public parking, LUP policies C 1.1.5, C 2.1, C 2.2.1, C 2.3, C2.3.1, and C 2.3.6, cited above, recognize that providing alternate means of serving the development with public transportation and other methods also helps to maximize public access, while reducing automobile use. To this end the LUP policies encourage the use of public transit as an alternate form of transportation as a means of providing non-automobile coastal access. In addition, LUP policies including C 2.21 and C 2.2.6, encourage the use of bicycles as both a means of alternate transportation for coastal access and as well as a lower cost recreational activity.

The proposed hotel site presents an opportunity to encourage the use of alternate transportation by both hotel guests and employees. Hotel guests could take advantage of public transportation or shuttle services to arrive at the hotel. Public transportation could also take hotel guests to area destinations. The area is served by the Orange County Transit Authority (OCTA), including Route 1 which runs the length of Pacific Coast Highway from Long Beach to San Clemente, as well as by routes leading inland, making public transit to and from other beach towns, inland locations and local airports an option. The nearest Route 1 bus stop is located on Pacific Coast Highway, approximately three blocks from the MTF site (one northbound, one southbound). There are two existing OCTA stops on the west side of Magnolia Street adjacent to the Specific Plan area. The Specific Plan requires that the transit

stop nearest the intersection of Banning Avenue and Magnolia Street be enhanced with a shelter and compatible street furniture. This enhanced bust stop may encourage hotel guests and employees to use public transit. This stop is nearest the hotel site, making it convenient for guests and employees, as it provides a location within easy walking distance of the hotel site. Similarly, public transit could also be an option for visitors to the MTF site interested in seeing the site's parks and trails and/or visiting the hotel's dining options. The location of the existing bus stops provides convenient public access to the hotel and on-site amenities ([Exhibit 11](#)).

If the future hotel provided a fleet of on-site bicycles for use by hotel guests, the guests could use them rather than private cars to get to many of the local area visitor sites. A public offroad, Class One (meaning completely separated from car traffic) beachfront bike path exists along the entire length of the beachfront in Huntington Beach, from to the City of Huntington Beach's southern border at the Santa Ana River, all the way to the upcoast end of Bolsa Chica State Beach. There is a painted, on-street bike lane along Magnolia Street, and a signalized intersection at Pacific Coast Highway and Magnolia Street, which allows bicycle access to the beachfront path. Thus, bicycles could serve as both transportation to the beach, while also allowing a recreational ride along the beachfront for hotel guests. Similarly, bicyclists already on the beach bike path may ride inland to the MTF site for a respite or picnic in one of the parks or a bite in a hotel restaurant. The beach bike path also links to inland areas via the striped, on-street bicycle lanes along Brookhurst Street (to Bushard Street), Magnolia Street, Newland Street, and upcoast along Warner Avenue, Sea Pointe Street, and Goldenwest Street, among others. The beachfront path could take hotel guests to the City's pier and downtown shopping and dining visitor core. In addition to the beach front bike path, there is another Class One bike path that connects from the beachfront path, under Pacific Coast Highway, inland along the Santa Ana River. This bike path is also completely separated from traffic. Guests could bike along the Santa Ana River bike trail to nearby destinations such as Talbert Regional Park which includes natural areas and trails, or other inland destinations. Both bike paths provide visitor recreation, as well as transportation.

In addition, if, in conjunction with the proposed hotel use, hotel guests are made aware of bike routes, bike rental shops and bike share facilities, as well as biking and walking maps, it would help to encourage non-automobile bicycle and walking use. This would make hotel guests aware of alternatives to driving a private car to many likely destinations. It also would make guests aware of possible recreational opportunities, such as biking in the area and to other visitor destinations. Bike-able and/or walk-able destinations in the project vicinity include: Huntington State Beach, Huntington Beach Pier, Bolsa Chica Ecological Reserve (no bike trails there, but a hotel guest could bike to the destination and then walk the extensive nature trails); and Bolsa Chica State Beach. Destinations within easy walking distance include Huntington State Beach, Talbert Marsh which can be viewed from the public trail on its inland side, and a little further, the beach in Newport Beach, just past the Santa Ana River. But the likelihood of hotel guests biking or walking to their destination is significantly increased if maps of bike routes and walking destinations and information about bike rentals are made available to hotel guests. This could be done with information provided in the hotel lobby and on its website. As proposed, the Specific Plan does not include these elements which are necessary to promote and provide public access and recreation, as required by the LUP policies cited above. Consequently, the Specific Plan is not in conformance with or

adequate to carry out the public access and recreation policies of the LUP and must be denied. However, if it were modified as suggested to require implementation of a TDMP as part of the Coastal Development Permit, these measures would be required with hotel development. Therefore, only if modified as suggested to require a TDMP with the CDP for hotel development will the Specific Plan be in conformance with and adequate to carry out the public access and recreation policies of the LUP.

Electric Vehicle Charging Stations

The LUP policies cited above encourage alternate forms of transportation. A newer method of alternate transportation that was not common when the LUP was last updated in 2000 is electric vehicles. The use of electric vehicles, compared to fossil fuel vehicles, minimizes energy consumption. Electric vehicles and supporting infrastructure are a component of the State's plan to reduce adverse effects of climate change (including sea level rise, severe storms, and fluvial flooding which have potential to directly affect the development that would be allowed by the LCPA). It is important to increase efforts to facilitate electric vehicle usage as a means of reducing greenhouse gas emissions resulting from the use of fossil fuels in traditional internal combustion vehicles. Toward that end, it is important to provide new electric vehicle (EV) charging options with new development as a means of promoting public access for all people (including people who rely on EV charging stations to reach recreational facilities) consistent with LUP policies regarding public access and recreation, and to create opportunities to increase the number of electric vehicle charging spaces in the future as demand increases. LUP policies require maintenance and enhancement of public access as it relates to new development, including "providing adequate parking facilities."

Because the hotel will be built from the ground up, it presents an excellent opportunity to increase the availability of electric vehicle charging spaces within the CV area, and to add additional conduit so that the parking lot is ready to increase the number of electric vehicle parking spaces in the future as demand increases. EV "ready" parking spaces are those that are fully ready to provide electric vehicle charging while an EV is parked in the space. The number of these should be maximized on site. EV "capable" parking spaces are those where installation of "raceway" (the enclosed conduit that forms the physical pathway for electrical wiring to protect it from damage) and adequate panel capacity is put in place, and thus "capable" to accommodate future installation of a dedicated branch circuit and charging station(s). The California Green (CALGreen) Building Code recommends that development projects that include parking provide 5% of the parking spaces as EV "ready" and an additional 5% of parking spaces as EV "capable." These should be included with the hotel development to ensure its consistency with LUP policies promoting alternative forms of transportation. In the absence of such requirements, the IP Amendment, as proposed, is not consistent with those policies. A Suggested Modification would add new Section 3.12.2, which requires EV charging stations that are consistent with CALGreen. With the addition of that suggested modification, the Specific Plan is consistent with and adequate to carry out the LUP policies that promote alternate forms of transportation.

Public Access Trail/Fire Access Road

As proposed, the Specific Plan would include a 24 foot wide, concrete public access trail/fire access road in the Coastal Conservation area. This location is not consistent with the habitat protection policies of the LUP. However, the property owner, supported by the City, has

offered to relocate this trail out of the CC zone and into the CV zone. Provided in the CV zone, this trail will significantly enhance public access on the MTF site. This trail would connect Magnolia Street, through Magnolia Park, the CV zone, and Marsh Park, to the northern property line. It is important that this trail be located so that unobstructed public views of Magnolia Marsh are provided. It is also important, due to its proximity to the CC zone, that the trail be permeable. In the absence of these changes, the proposed road is inconsistent with the LUP and must be denied.

Suggested modifications to Specific Plan Section 3.4.1 Public Trail Overlooking Magnolia Marsh ensure that the trail will be located in the CV, not CC, zone; that it be constructed of natural, permeable materials, that it provide connection from Magnolia Street, through Magnolia Park, the CV zone, and Marsh Park to the northern property line, and that it provide unobstructed public views of Magnolia Marsh. If modified as suggested, the proposed public access trail and fire access road would conform with and be adequate to carry out the public access and recreation policies of the LUP.

4. Public Access and Recreation

The LUP includes the following policies:

Public Access Policies

C 1.1.3a

The provision of public access and recreation benefits associated with private development (such as but not limited to public access ways, public bike paths, habitat restoration and enhancement, etc.) shall be phased such that the public benefit(s) are in place prior to or concurrent with the private development but not later than occupation of any private development.

C 1.1.5 (in pertinent part)

New residential development should be sited and designed in a manner that it maintains and enhances public access to the coast.

...

- a) Provide non-automobile circulation such as bike trails and pedestrian walkways within the development;
- b) provide adequate parking facilities or a substitute means of serving the development with public transportation;
- c) provide for the recreational needs of new residents through local park acquisition or on-site recreational facilities to assure that recreational needs of new residents will not overload nearby coastal recreation areas;

...

C 1.2.2

Require that development be designed to account for the unique characteristics of project sites and objectives for Coastal Zone character in accordance with the Development "overlay" schedule listed in Table C-1, as appropriate.

C 2

Provide coastal resource access opportunities for the public where feasible and in accordance with the California Coastal Act requirements.

C 2.1.1

Provide signs along the following corridors to guide and facilitate beach bound traffic:

...

Magnolia Street

...

C 2.2.2

Maintain existing pedestrian facilities and require new development to provide pedestrian walkways and bicycle routes between developments.

C 2.2.5

Link bicycle routes with pedestrian trails and bus routes to promote an interconnected system.

C 2.2.6

Provide adequate bike racks at appropriate locations within the Coastal Zone with special emphasis for facilities adjacent to the beach.

C 2.2.7

Develop a riding and hiking trail network and support facilities that provide linkages within the Coastal Zone where feasible and appropriate.

C 2.4

Balance the supply of parking with the demand for parking.

C 2.4.1

Maintain an adequate supply of parking that supports the present level of demand and allows for the expected increase in private transportation use.

C 2.4.2 (in pertinent part)

Ensure that adequate parking is maintained and provided in all new development in the Coastal Zone utilizing one or a combination of the following:

- a. Apply the City's parking standards at a minimum.
- b. ...

C 2.4.5

Prohibit the establishment of preferential parking districts, whenever it would adversely affect public access to the coast through a reduction in the availability of on-street spaces for public visitors to the coast.

Policy 2.4.7 (in pertinent part):

The streets of new residential subdivisions between the sea and the first public road shall be constructed and maintained as open to the general public for vehicular, bicycle, and pedestrian access. General public parking shall be provided on all streets throughout the entire subdivision. ...

C 2.5

Maintain and enhance, where feasible, existing shoreline and coastal resource access sites.

C 2.6

Promote and provide, where feasible, additional access, including handicap access, to the shoreline and other coastal resources.

C 2.6.6

Promote public access to coastal wetlands for limited nature study, passive recreation and other low intensity uses that are compatible with the sensitive nature of these areas.

C 2.7.1

Maintain and enhance, where necessary, the coastal resource signing program that identifies public access points, bikeways, recreation areas and vista points throughout the Coastal Zone.

Public Recreation Policies

C 3

Provide a variety of recreational and visitor commercial serving uses for a range of cost and market preferences.

C 3.1.3

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

C 3.2

Ensure that new development and uses provide a variety of recreational facilities for a range of income groups, including low cost facilities and activities.

C 3.2.1

Encourage, where feasible, facilities, programs and services that increase and enhance public recreational opportunities in the Coastal Zone.

C 3.2.2 (in pertinent part)

Lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. ...

C 3.3.1

Establish the responsibility for long term maintenance and liability prior to approval of any major recreational facility, including marina, public park, trail, etc.

C 3.1.3

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

C 3.2

Ensure that new development and uses provide a variety of recreational facilities for a range of income groups, including low cost facilities and activities.

C 3.2.1

Encourage, where feasible, facilities, programs and services that increase and enhance public recreational opportunities in the Coastal Zone.

Visual Resources Policies

C 4

Preserve and, where feasible, enhance and restore the aesthetic resources of the City's coastal zone, including natural areas, beaches, harbors, bluffs and significant public views.

C 4.1

Provide opportunities within the Coastal Zone for open space as a visual and aesthetic resource.

C 4.1.1

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect public views to and along the ocean and scenic coastal areas.

The LUP policies cited above promote maximum public access to the coast and to coastal resources. The LUP policies also promote the provision of public recreational opportunities for a range of income groups and require the protection, enhancement and provision of recreational opportunities. Preservation of visual resources is also prioritized and the need to provide open space as a visual and aesthetic resource is also required. In this area, Huntington State Beach is one block south of the MTF site. Magnolia Marsh, one of the tidally influenced restored wetlands in the Huntington Beach Wetlands Complex, is immediately adjacent to the south/southwest side of the MTF site.

As approved by the City, of the 29 acre Specific Plan area, 2.8 acres are proposed to be zoned Open Space – Parks & Recreation (OS-PR). The OS-PR zoned area is proposed along the MTF site's Magnolia Street frontage (called Magnolia Park in the Specific Plan) and in the area between the hotel site (CV zone) and residential area (RM zone) area fronting on the flood control channel (called Marsh Park in the Specific Plan). The OS-PR area called Magnolia Park is the larger of the two OS-PR zones. As approved, Marsh Park is intended to

serve as the staging area for Huntington Beach Wetlands Conservancy (HBWC) docent led tours of Magnolia Marsh for hotel guests and the public.

As described in the findings for denial of the LUPA as submitted, and approval if modified, the area to be dedicated to the OS-PR zone is insufficient to meet the needs of both the MTF development's new residents and also maximize public access and recreation for coastal zone visitors.

Section 254.08 of the City's Zoning Code (which is also the certified IP), establishes the amount of parkland required with new subdivisions. Section 254.08.A.6 states that the goal of this Chapter is to provide five usable acres (or portion thereof) for each 1,000 persons residing in the City.⁶³ Section 254.08.B establishes the requirements for the provision of the required parkland with new development. Section 254.08.D provides the following formula for determining the area of parkland required:

$$A = \frac{5.0 (DF \times \text{No. DU})}{1000}$$

Where:

- a. A = the area in acres required to be dedicated as a park site.
- b. DF = intensity factor as determined pursuant to Section 254.08(E).
- c. 5.0 = number of acres per 1,000 persons.
- d. No. DU = number of dwelling units proposed in the subdivision.

The Planning Commission staff report (10/22/2019) prepared for the proposed Specific Plan project states:

"Assuming a total of 250 detached dwelling units are constructed, the park requirements would equal 3.64 acres (5 (2.913 persons per dwelling x 250 units) / 1000 = 3.64 acres). Staff is recommending accepting park in lieu fees of up to approximately \$4.46 million for 250 detached dwelling units. The visitor serving commercial component also requires payment of park impact fees."

The proposed Specific Plan will provide only 2.8 acres of parkland on-site and allow payment of a fee in lieu of providing the remaining 1.84 acres of required parkland on-site. The formula identifies the parkland needs generated by the future residents of a new development. It does not address the LUP's requirement to increase and enhance public recreation and public access for members of the general public visiting the coast. In addition, the Specific Plan does not require that the in lieu fee be applied in the coastal zone. Moreover, payment of an in lieu fee results in a delay between the time the parklands are needed compared to when they are provided. Payment of an in lieu fee rather than providing increased parklands on site is not consistent with the LUP policies that require that lower cost recreational opportunities be provided in the coastal zone.

⁶³ Section 254.08.A.6 states: "To provide regulations requiring five usable acres, or the proportionate share thereof, having a grade not exceeding two percent, for each 1,000 persons residing within the City to be supplied by persons proposing residential subdivisions."

LUP policies require that public access opportunities be provided and enhanced where feasible. Policy C 2.6.6 requires that public access to coastal wetlands for low intensity uses compatible with the nature of such areas be promoted. LUP policies also recognize that opportunities for access to scenic coastal views be provided. LUP policies also generally require that public recreational facilities be provided to serve a range of income groups, including low cost facilities.

LUP policy C 4 requires that the aesthetic resources of the City's coastal zone, including significant public views, be preserved and enhanced. Policy C 4.1 requires that opportunities within the coastal zone for open space as a visual and aesthetic resource be provided. Policy C 4.1.1 requires that scenic and visual qualities of coastal areas be considered and protected as a resource of public importance and that permitted development be sited and designed to protect public views to and along scenic coastal areas.

The MTF site constitutes a significant opportunity to provide public access and recreation while also providing visual access to scenic coastal views of Magnolia Marsh.

Marsh Park

In the Specific Plan approved by the City, Marsh Park would be located in the area adjacent to Magnolia Marsh, near the existing Orange County Public Works' (OCPW) bridge that crosses the flood control channel, between the proposed CV zone and proposed RM zone. Marsh Park amenities are not specifically required in the Specific Plan but may include marsh interpretive signage, an observation deck with seating and an amphitheater. No picnic facilities or play area or similar public amenities are proposed at Marsh Park. As proposed, Marsh Park would be only 0.37 acres of the entire 29 acre MTF site. ([Exhibit 3](#)).

No public views are provided from Magnolia Park and only very limited public views would be available from Marsh Park. At a mere third of an acre, Marsh Park would not be a significant visitor draw and, in any case, could not support significant public use. The OS-PR zone overall is not adequate to meet LUP policy requirements to provide public access, lower cost public recreation, and public views.

Since the City's approval of the Specific Plan LCPA, the property owner, supported by the City, have offered to increase the area zoned OS-PR at the MTF site. The expanded area would eliminate the RM zone along the MTF site's border with the flood control channel, and replace that area with an expanded Marsh Park, meaning Marsh Park would extend from the CV area to the northern property boundary. As now offered, the area of Marsh Park would increase from 0.37 acres to a minimum of 1.52 acres, more than quadrupling its original size. Together with the public trail in the CV zone, this allows for a public park with a trail along the entire marsh fronting side of the property, from Magnolia Street to the northern property boundary. This change would provide public access, recreation and continuous scenic public views of the marsh. The expanded Marsh Park OS-PR zone would also provide increased public recreational opportunities, which are also now offered by the property owner. These amenities include the 10 foot wide pedestrian trail from the CV zone to the northern property boundary, additional secondary permeable trails with boardwalk crossings, tot lot play area with perimeter benches, public art, passive seating areas, picnic areas with picnic tables, open lawns, marsh interpretive panels & plaza, amphitheater, and marsh overlook areas with

seating. Other Marsh Park amenities now offered include bike racks, drinking fountains, bioswales, dog waste stations, and trash receptacles. In addition, a parking lot, located between Marsh Park and the MTF Interior Loop road, is offered. Suggested modifications are required to implement the proposed expansion of the size of and amenities available in Marsh Park, in order for the IP to carry out the provisions of the LUP.

Magnolia Park

Magnolia Park OS-PR zone would be 2.47 acres, located along the MTF site's Magnolia Street frontage. It would be planted with "dry riparian woodland" landscaping. Public amenities to be provided in Magnolia Park include an 8-foot-wide meandering, decomposed granite trail, benches, activity nodes, and native landscape with shade trees. In addition, Magnolia Park will include benches, picnic areas with picnic tables and a shade structure, trash receptacles, dog waste stations, and public art. A public community gathering place is also proposed in Magnolia Park.

Magnolia Park would be located within an area of the six acre landscaped berm that screened the former oil tank farm and related operations from public view. Though never formally a public park and in private ownership, the berm was used informally by local area residents who called it Squirrel Park. Given that the existing landscaped berm is six acres and the total of all MTF OS-PR zoned land is 2.8 acres, Magnolia Park as depicted and described in the Specific Plan, would be significantly smaller than the existing landscaped berm. Magnolia Park will offer public recreational opportunities, and with the proposed landscaping, a pleasant view from Magnolia Street.

The constraints that so often confound the provision of maximum access, recreation and views are not present here. No existing development interferes, and the site is large enough to accommodate these priority uses and still accommodate residential and visitor serving uses. The site's location adjacent to the Magnolia Marsh makes the on-site provision of public recreation and access with scenic coastal views especially valuable. As approved by the City, the Specific Plan would not even provide the on-site parkland required by the IP that would serve only the new residents of the MTF development, let alone increased public access and recreational opportunities for coastal zone visitors. With expected future narrowing and losses of public beaches due to SLR, together with increased future populations, demand for park area in the coastal zone, especially those with scenic coastal views, will only increase in the future. In this case, the site could provide public access, recreation, and scenic coastal views. However, the proposed Specific Plan will not do this, inconsistent with the public access, public recreation, and public view policies of the LUP. The 2.8 acres of park area to be provided on-site by the Specific Plan as approved by the City, is insufficient to meet the needs of the new residents as well as general public visitors to the City's coastal zone. As approved by the City, Marsh Park, in particular, is not sited or designed to provide significant access, recreational amenities, or public views.

The best location for public park area at this site is where there will be views of the marsh. However, only a very small part of the site would provide public park area with marsh views. Moreover, the area to be used for Open Space Parks along Magnolia Street would not be a visitor draw, because there are no views and no significant amenities, and it will be placed immediately adjacent to a primary arterial street. Given the size and intensity of the

development that would be allowed by the proposed Specific Plan, and the potential for the site to provide meaningful public access and recreation opportunities, the 2.8 acres of parks would not actually provide a significant public visitor serving benefit. The property owner and Specific Plan proponent, with the agreement of the City, has since suggested expanded park areas, but these are not part of the Specific Plan as proposed. Thus, the plan is inconsistent with LUP policies requiring that new development provide recreational uses and promote recreational access to wetlands. Therefore, the proposed Specific Plan is inconsistent with and inadequate to carry out the public access and recreation policies of the LUP and must be denied.

As offered by the property owner and supported by the City, the OS-PR zone will be increased on the MTF site, consistent with the public access and recreation policies of the LUP. However, it is important that this offer will also retain area/acreage of the proposed CV and CC zone, which are 5.09 acres and 2.8 acres, respectively. It must be clear that the added OS-PR zone area will result in a commensurate decrease in RM zone area. To that end, all Figures, Maps, and text in the Specific Plan must be revised to reflect the increased OS-PR area offered by the property owner. Likewise, the Implementation Zoning Map must also be modified to reflect these changes. Without this requirement, adverse impacts to visitor serving or sensitive habitat areas could result by reductions in their respective area/acreages, inconsistent with LUP policies regarding promotion of visitor serving opportunities and protection of sensitive habitat. If the Specific Plan IPA, including the Zoning Map, are modified as suggested, the IPA would be consistent with and adequate to carry out the public access, visitor serving, and sensitive habitat protection policies of the LUP.

Public Access and Recreation Signage Plan & Walls and Fences Plan

The public access and recreational amenities that will be provided with the proposed Specific Plan as modified, including the on-site parks, trails and scenic views, may not be readily obvious to the public because many will not be visible from the nearest main thoroughfare, Magnolia Street.

As currently proposed, the Specific Plan requires signage that states the parks are not owned or maintained by the city. Specifically, the signage is required to say: "All applicable signage will notify the public that the park is not maintained by the City nor part of the City's park system." Such language could easily be interpreted to mean the parks and amenities are available only to the MTF site's residents and not available for use by the public. This raises concerns that the public would not use the on-site public parks and amenities, even though they have a right to do so. These signs would effectively reduce the public benefits available within the OS-PR zones.

When development includes public amenities, such as public access, recreation, and scenic views, the Commission typically requires signage to ensure that the public is made aware that these public benefits are available. This is necessary to ensure public access and recreation is provided with the Specific Plan development, as required by the LUP public access, recreation and visual resources policies. However, the proposed Specific Plan does not require public access and recreation signage. Implementation of a signage plan would notify the public of the public nature of the parks and amenities available on-site. A Public Access & Recreation Signage Plan should be developed and implemented for the site in

order to carry out the provisions of the LUP. This would allow the signage to be coordinated and most effective. A modification is suggested to amend Section 3.4.6 to require a Public Access & Recreation Signage Plan to be provided with any CDP application for the Specific Plan development. Implementation of this plan would make the public aware that the amenities are present on the site and that they are available for general public use. As modified, signage that discourages public access is prohibited.

Likewise, walls and fences can be placed such that public access and recreation is discouraged or not obvious. There will be walls and fences between the public and residential areas within the Specific Plan area. It is important that any walls and fences not limit access or use of the public amenities. In addition, it is important that any walls and fences contribute to a positive welcoming environment for all by, among other things, being aesthetically pleasing and welcoming to visitors. This can be accomplished by measures such as constructing block walls with offset footprints for visual interest and screening them with appropriate landscaping. Similarly, permanent chain link type fencing should not be allowed in areas visible to the public. It is also recognized that some fencing will be necessary to protect habitat in the CC zone. These fences will also be included in the required Walls & Fences Plan. A Walls and Fences Plan is necessary to ensure that any walls and fences are appropriate to promoting and maintaining public access and recreation at the MTF site.

The MTF project proposes to include monumentation at each of the two site entries (across from Banning Avenue and across from Bermuda Avenue). This entry monumentation is described in Section 3.3 Entries of Volume 2 of the Specific Plan. It is described as consisting of “large canopy accent trees, a series of masonry walls, signage wall, pilasters with decorative pots, and accent planting.” It is important that such entry monumentation be welcoming to the general public so that use of the on-site public amenities is not discouraged. Gated entries are prohibited by the Specific Plan, but imposing walls and signage, among other measures, can create the appearance of a private enclave available only to residents or hotel guests. To avoid these potential adverse impacts on public access and recreation at the MTF site, entry monumentation should be included in the Walls & Fences Plan to ensure consistency with the public access and recreation policies of the LUP. In addition, the entry monumentation should be included in the Public Access & Recreation Signage Plan, to ensure that entry signage would not discourage the general public from entering the site. Signage should be placed on Magnolia Street so that the general public is aware of the public amenities on site and encouraged to make use of them.

Without a Public Access & Recreation Signage Plan, the Specific Plan is not consistent with the LUP policies that require the provision of public access and recreation with new development. A Walls & Fences Plan is also needed to ensure that public access and recreation is not curtailed by walls or fences on site that would deter public use. That, too, would be inconsistent with LUP policies. Therefore, the Specific Plan is not consistent with and is inadequate to carry out the public access and recreation policies of the LUP. However, if the Specific Plan is modified as suggested by amending Section 3.4.6 Signs and other references to signs throughout the Specific Plan, to require a Public Access and Recreation Signage Plan with any CDP for residential or commercial development at the MTF site, the Specific Plan could be found to be consistent with and adequate to carry out the LUP policies. In addition, if the Specific Plan were modified as suggested by adding new Section

3.6.7 Walls and Fences Plan, the Specific Plan IPA would be consistent with and adequate to carry out the LUP public access and recreation policies. Because these are not included in the Specific Plan as proposed, the IPA must be denied. However, if modified as suggested, the IPA is consistent with and adequate to carry out the public access and recreation policies of the LUP. Therefore, if modified as suggested, the Specific Plan can be approved.

Public Parking & Bicycle Racks

The LUP protects and promotes public access, in part, by ensuring that new development, especially in areas within walking distance to the beach (which the subject site is), provides adequate parking to serve the development. The proposed Specific Plan would allow reduced parking requirements for the proposed up to 250 residential units compared to what is required by Chapter 231 of the City's IP/zoning code. Section 231.04 of the zoning code/IP requires two open and two enclosed parking spaces for single family residential development with up to four bedrooms, and three open and two enclosed parking spaces for single family residential development with five or more bedrooms. For multi-family residential development, for studios and one-bedroom units, one enclosed space is required. For units with two bedrooms, two parking spaces, with at least one enclosed, are required. And for units with three or more bedrooms, 2.5 spaces (one enclosed) are required. In addition, multi-family residential development also requires one half guest space per unit.

For single family residences, the proposed Specific Plan includes code-required parking for multi-family residential development, rather than the parking required for single family residential development. The Planning Commission staff report prepared for the Specific Plan and related entitlements (10/22/2019) states:

"In order to create attainable housing, the applicant is proposing development standards that would allow product types that have been built in other parts of Orange County that are more compact and taller with *reduced yards* and *parking* compared to what the HBZSO [Huntington Beach Zoning and Subdivision Ordinance, also the IP] permits." [emphasis added]

Section 3.1 of the Specific Plan states: "The residential component of the land use plan will consist of single-family detached and attached homes." If the Specific Plan requires fewer parking spaces for proposed single family residential development, and absent any data to suggest the proposed development would generate a reduced parking demand than the current zoning/IP requires, it is likely that residents would end up parking on the public streets of the subdivision, displacing spaces that would otherwise be available for public access parking. Moreover, this reduction in required parking is intended to achieve "attainable housing." However, it is important to note that that, while "attainable housing" has not been defined by the City, it does not mean affordable housing.

Finally, development allowed under the proposed Specific Plan would include work on Magnolia Street, including construction of curb, gutter and sidewalk improvements. Currently, public parking on Magnolia Street adjacent to the MTF site is limited to two hours during the day, and one hour at night, even though it is within a block of the beach. This limitation makes it very difficult for a beach visitor to use these public parking spaces. Because by the time they parked, walked to the beach and set out a towel, and went for a swim, the parking time limit would likely have expired.

Parking along this stretch of Magnolia Street could provide a significant reservoir of public parking to serve beach access as well as access to any public amenities available on the MTF site. LUP Policy C 2.4.1 requires an adequate supply of parking to support the present level of demand and allows for the expected increases in private transportation use be maintained. LUP Policy C 2.4.2 requires that adequate parking is maintained and provided with all new development. The property owner, supported by the City, and pursuant to a Development Agreement between the two, has offered to replace existing public parking spaces along the Magnolia Street property frontage, as well as to create additional, new parking spaces along Magnolia Street and Hamilton Street's frontage at Ascon. The provision of this additional on-street parking could help to reduce potential public access impacts from the reduced parking requirement for the residential development on the MTF site. However, for this on-street parking to be effective, it cannot include parking limitations that impact public access to the MTF's amenities or to the public beach one block south.

As proposed, the Specific Plan would allow reduced on-site parking for the residential development. To offset public access impacts resulting from this reduction, the street improvements (new sidewalk, curb, gutters, etc.) required in the Specific Plan to be constructed along the MTF site's Magnolia Street frontage must include on-street public parking. In addition, the on-street parking along the Ascon street frontage must also be provided, consistent with the Development Agreement. All of these on-street parking spaces are within walking distance of the beach (the furthest is about three or four blocks away). To maximize public access by providing public on-street parking that could be used for beach access, time restrictions for these spaces should be discouraged. Any time restrictions that must be imposed should allow enough time to walk to the beach, spend a few hours there, and walk back, a time frame of at least five hours. In addition, no further restrictions, other than those imposed throughout the City, such as for periodic street sweeping, should be allowed. However, the proposed Specific Plan does not include a requirement that the on-street public parking on Magnolia and Hamilton be free from time restrictions that would preclude beach use parking. Documentation (such as police reports, photos, resident complaints) of the need for this extreme parking limitation was requested of the City, but none has been received.

Given the history of imposition of extreme time restrictions on the parking spaces along Magnolia Street that prevents the spaces from providing meaningful beach use parking, and given that the property owner is required by the Specific Plan to conduct street improvements on Magnolia Street, and also required by the Development Agreement to create on-street parking at the Ascon frontage along Hamilton Avenue and Magnolia Street, an opportunity to assure increased beach access parking is presented with this LCPA. Currently, the Specific Plan is silent regarding time restrictions on these on-street public parking spaces. However, any time restrictions on these public parking spaces would adversely impact public beach access. Thus, as proposed, the Specific Plan IPA is inconsistent with the public access and recreation policies of the LUP and must be denied. However, if the Specific Plan were modified as suggested at Section 3.4.5 Public Parking to discourage time limitations on these parking spaces, and allow at least five hours of public parking, public access would be maximized, consistent with the public access policies of the LUP. Therefore, as proposed, the Specific Plan must be denied, but if modified as suggested it can be approved.

Parking on the Specific Plan's Interior Loop road is proposed to be available for general public parking. In addition, the property owner has offered a public parking lot to serve Marsh Park. It is also important that bicycle racks be available in both parks to serve those who access the site via bicycle. In order to maximize public access, it is important that the Interior Loop road and Marsh Park parking lot public parking spaces and the bicycle racks be provided as proposed and as offered. Therefore, modifications are suggested at various locations in the Specific Plan to confirm these public access amenities will be provided with Specific Plan development. As modified, the Specific Plan is consistent with and adequate to carry out the public access policies of the LUP.

Privately Owned, Publicly Accessible Amenities

As proposed, the Interior Loop road, public parks, and other amenities will be privately owned by the Homeowner's Association (or similar entity) related to the future residents of the MTF site. Although these will be privately owned and maintained they are required to be open and available to the general public. To remain consistent with the public access and recreation policies of the LUP cited above, the public roads, public parking and related public access and recreation amenities must remain open and available to the public for the life of the development. With just two entrances into the site, future residents may wish to place guards or gates or other means at those entrances to deter or limit public access. In addition, they may want to convert the interior roads and related parking to private use of the MTF residents only. Policy C 2.4.5 prohibits preferential parking districts including at the MTF site. To make clear that none of these are allowed, and to assure they cannot happen in the future, modifications are suggested to Specific Plan Section 3.4.7 Covenants, Conditions and Restrictions and to Section 3.7 General Parking Requirements to include these requirements in the Specific Plan and in the future residential development's Covenants, Conditions, and Restrictions (CC&Rs). If modified as suggested, the Specific Plan will be consistent with and adequate to carry out the public access and recreation policies of the LUP.

Marsh Interpretive Programs

The proposed Specific Plan states that Marsh Park will be used as a staging area for docent led tours of the marsh. Section 3.4.2 of the Specific Plan describes this proposal as follows:

"The owner of the Magnolia Tank Farm property will enter into an agreement with a non-profit wetlands education organization to conduct interpretive programs for the public and guests at the Lodge. The agreement will allow The Lodge owner/operator to partner with the non-profit to provide Magnolia Marsh wetlands interpretive programs for Lodge guests and the public through interpretive signage and access to docent-led tours of Magnolia Marsh.

The Lodge would provide a gathering place for hotel guests and transportation to the Huntington Beach Wetlands Conservancy Interpretive Center where current tours depart. Docent-led tours may use the existing bridge over the Huntington Beach Channel to access the marsh if feasible, as determined by the City of Huntington Beach and County of Orange in conjunction with the Huntington Beach Wetlands Conservancy, at the time a development proposal is submitted. Marsh Park, located on the north side of the CV area (PA4) and adjacent to the bridge, would serve as a staging area for interpretive programs conducted by the non-profit organization.

Interpretive signage designed to educate the public about sensitive wetland and upland habitats will be placed in Marsh Park to augment the organized tours conducted by the non-profit organization.”

However, although this would provide a benefit for guests of the proposed hotel and a useful marketing tool for the hotel, there is no requirement in the Specific Plan that the “non-profit wetland education organization” would be compensated for their costs, let alone receive something that would assist with continued maintenance and protection of the wetlands or restoration of the areas planned for that purpose. In addition, the above language only includes these tours as a benefit for the market-price Lodge portion of the proposed hotel. It doesn’t mention this as an amenity for the lower cost Guest House portion of the hotel. It is also not stated how these tours would be promoted to the general public.

This program envisioned using the hotel as a gathering place from which to transport guests to the Huntington Beach Wetlands Conservancy’s Interpretive Center, from which tours of Magnolia Marsh would depart. It also envisions the possibility of departing from Marsh Park and accessing the marsh via the existing bridge over the flood control channel, if determined feasible by the City and Orange County (Orange County Public Works is the owner of the flood control channel and bridge). The bridge is located adjacent to approximately the middle of the MTF site’s south/southwestern property boundary. Marsh Park would serve as the staging area for these tours and would also include interpretive signage about the wetlands and upland habitats of Magnolia Marsh.

However, since approval by the City, the property owner, supported by the City, has offered more detail about these marsh interpretive programs and tours. A funding mechanism has been established to support HBWC’s tours and programs. An Outreach Program designed to increase participation in the tours and the programs by hotel guests, the general public and specifically by disadvantaged communities, must be submitted with any CDP application for development in the CV zone. Due to historic inequities, disadvantaged communities have often had limited access to the coast (including opportunities such as these marsh programs). To correct past inequities, the Outreach Program, in addition to including the general public, will make specific efforts to include groups who may not otherwise be included. The required Outreach Program must include establishing partnerships between the hotel operator and non-profit organizations that provide educational/interpretive programs in disadvantaged communities with the goal of attracting people within these communities to participate in the tours and programs; creation and distribution of outreach materials targeting School Districts with Title 1 schools to solicit participation in the programs and tours; posting of information regarding the availability of the programs and tours on both the HBWC’s and hotel’s websites; creating cultural interpretive programs for the public in cooperation with local Native American Tribal groups; in consultation with environmental organizations such as the Audubon Society, creation of opportunities for bird watching; and, the hotel operator will provide opportunities for transportation for disadvantaged communities to the Huntington Beach Wetlands to facilitate participation in tours and programs. The details of these requirements will be established in the Outreach Plan, including funding sources and minimum frequency of transportation, required to be submitted with any CDP for development in the CV zone.

As proposed, the Marsh Interpretive Program would primarily have benefitted guests at the market rate lodge, which would not have maximized public access and recreation, as required by the LUP public access and recreation policies. Thus, the Specific Plan IPA must be denied. Public participation, particularly for disadvantaged communities, must be promoted. To overcome inequities that may prevent disadvantaged communities from participating in the programs offered, the outreach includes measures to specifically target these groups. The outreach additions now offered, including a known funding mechanism (Collaboration Agreement, 7/31/2018) and the proposed Outreach Program will maximize public access as required by the public access policies of the LUP. However, these benefits were not included in the Specific Plan as approved by the City, and so suggested modifications are required to incorporate them into the Specific Plan. The modifications to Section 3.4.2 Marsh Interpretive Programs, would incorporate all these requirements into the Specific Plan. Thus, the Specific Plan, if modified as suggested, will be consistent with and adequate to carry out the LUP policies regarding public access and recreation policies of the LUP.

Public Art

While the Commission wholeheartedly supports the placement of art in public spaces, it is important that it be thoughtfully placed. If not carefully placed, large art pieces could obstruct public views of Magnolia Marsh. In order to assure this does occur, a modification is suggested at Specific Plan Section 3.1.5 to prohibit placement of art where it could interfere with public views. The modification is needed for the Specific Plan to be consistent with the visual resource policies of the LUP.

CC&Rs

To ensure that the public access and recreation amenities offered in the Specific Plan as modified are included for the life of the MTF development, modifications are suggested to include these requirements in the Specific Plan and in the future residential development's Covenants, Conditions, and Restrictions (CC&Rs). The CC&Rs would describe the responsibilities of the HOA/PPOA (or similar entity) to maintain, repair and replace all the public amenities offered at the site. These include, but are not necessarily limited to, the public parks and trails, the privately owned, publicly accessible Interior Loop road and parking on the road, the Marsh Park public parking lot, the CC zone habitat area, signage, walls and fences, and the prohibition on restricted (guarded, gated, etc.) entry and on preferential parking districts. The CC&Rs shall make clear that the HOA/PPOA (or similar entity) shall not interfere with the public's continued access to the public access and recreational amenities on-site. These modifications are located in Specific Plan Section 3.4.7 Covenants, Conditions, and Restrictions. If modified as suggested, the Specific Plan will be consistent with and adequate to carry out the public access and recreation policies of the LUP.

5. Sensitive Habitat

LUP Policies:

C 1.1

Ensure that adverse impacts associated with coastal zone development are mitigated or minimized to the greatest extent feasible.

C 4.6.1

Landscaping adjacent to environmentally sensitive habitat areas, such as wetlands, and coastal dunes shall consist of non-invasive, native drought tolerant plants. No permanent irrigation systems shall be allowed adjacent to environmentally sensitive habitat areas.

C 7

Preserve, enhance and restore, where feasible, environmentally sensitive habitat areas (ESHAs) in the City's Coastal Zone, including in the Bolsa Chica which is within the City's Sphere of Influence.

C 7.1

Regulate new development through design review and permit issuance to ensure consistency with Coastal Act requirements and minimize adverse impacts to identified environmentally sensitive habitats and wetland areas.

C 7.1.2

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those resources shall be allowed within those areas. In the event that development is permitted in an ESHA area pursuant to other provisions of this LCPA, a "non-net-loss: policy (at a minimum) shall be utilized.

C 7.1.3

Development in area adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

C 7.1.4 (as modified by the LUPA)

Require that new development shall be located outside of buffer zones required to protect wetland or environmentally sensitive habitat areas. Buffer zones shall be a minimum of one hundred feet from the landward edge of the wetland, with the exception of the following:

A lesser buffer may be permitted if existing development or site configuration precludes a 100 foot buffer, or conversely, a greater buffer zone may be required if substantial development or significantly increased human impacts are anticipated. In either case, the following factors shall be considered when determining whether a lesser or wider buffer zone is warranted. Reduced buffer zone areas shall be reviewed by the Department of Fish and Game prior to implementation.

- a) Biological significance of adjacent lands: The buffer should be sufficiently wide to protect the functional relationship between wetland and adjacent upland.

- b) Sensitivity of species to disturbance: The buffer should be sufficiently wide to ensure that the most sensitive species will not be disturbed significantly by permitted development, based on habitat requirements of both resident and migratory species and the short and long term adaptability of various species to human disturbance.
- c) Susceptibility of parcel to erosion: the buffer should be sufficiently wide to allow for interception of any additional material eroded as a result of the proposed development based on soil and vegetative characteristics.

Lighting

C 4.1.4

Preserve skyward, night time views through minimization of lighting levels along the shoreline.

Tree Replacement

C 4.6.3

For new re-development, require the preservation of existing mature trees (as defined by the City's Landscape Ordinance). If preservation of existing mature trees is not feasible, require that removed trees be replaced at a minimum 2:1 ratio either on site, or elsewhere within the Coastal Zone, as prescribed by the City.

LUP Policy C 7.1.2 requires that ESHA be protected from significant disruption and that only uses dependent upon the resource are allowed within ESHA. In addition, LUP Policy C 7.1.3 requires development adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade those areas. LUP Policy C 7.1.3 further requires that development be compatible with the continuance of the habitat area. The LUP policies cited above require protection of environmentally sensitive habitat areas (ESHA) and wetlands. The proposed Specific Plan includes 2.8 acres zoned Coastal Conservation. This area is proposed along the flood control channel/marsh frontage, along the property's south/southwestern property line. This Coastal Conservation zone is intended to provide a habitat buffer between MTF development and Magnolia Marsh.

The MTF site is adjacent to the 40 acre Magnolia Marsh. Magnolia Marsh is part of the larger Huntington Beach Wetlands Complex. As described in the LUPA findings, Magnolia Marsh is a significant wetland ESHA for which the LUP requires protection. The proposed Specific Plan would allow new zoning that would result in up to 250 residential units and a hotel with related accessory development on the MTF site, which is adjacent to the Magnolia Marsh ESHA. It is important to assure that development resulting from the proposed specific plan prevents impacts on the Magnolia Marsh ESHA and that any MTF development will be compatible with the ESHA's continuance, as required by LUP Policy C 7.1.3.

The Specific Plan proposes a 70 foot wide Coastal Conservation (CC) zoning along the property's border with the flood control channel. This is intended to serve as an on-site buffer from the marsh ESHA. In this case, as described in the LUPA findings, the area between the CC zone and the Magnolia Marsh includes the 145 foot wide Huntington Beach flood control channel. In addition to the flood control channel, there is a 30 foot wide flood control channel maintenance road right of way (ROW) between the MTF site and the flood control channel.

While this ROW area does not offer any habitat value, it does provide a further separation of MTF site development from the Magnolia Marsh ESHA. Altogether, the 145 foot wide flood control channel, the 30 foot wide maintenance road ROW, and the 70 foot wide CC zone on the MTF site, result in a distance of 245 feet that will separate MTF development from the Magnolia Marsh ESHA. This distance will allow adequate protection of the Magnolia Marsh ESHA and will allow MTF development to be compatible with the continuance of the ESHA and minimize impacts to it.

In addition, as currently offered by the property owner and City, an OS-PR zone will be adjacent to the CC zone along the MTF site nearest the northern property boundary, which provides further distance between the Magnolia Marsh ESHA and site development. Moreover, the OS-PR zone will be mostly permeable, which is desirable next to the CC zone as it can help filter water adjacent to the CC zone. In the area of the MTF site adjacent to the southern end of the CC zone, is the CV zone. The area of the CV zone closest to the CC zone, as modified, will include a 24 foot wide, natural permeable public access trail/fire access road. This will also assist in providing further separation between the CC zone and CV related development. A suggested modification is necessary to reflect this preferred trail location in the Specific Plan. The modification is suggested to Section 3.4.2 Public Trail Overlooking Magnolia Marsh and in other areas throughout the Specific Plan.

To ensure that the CC zone provides the best protection for the Magnolia Marsh ESHA, it must be planted with appropriately compatible vegetation, and monitored and maintained for the life of the MTF development. The Specific Plan as proposed does include a requirement for a Habitat Management Plan (HMP) for the CC zone. However, the requirement lacks the detail necessary to ensure the habitat of the CC zone will thrive. Therefore, a modification is suggested to Specific Plan Section 3.10.1 Habitat Mitigation Plan that provides a detailed description of what the HMP must include. This will ensure that the CC zone will provide the habitat and buffer services required to protect the Magnolia Marsh ESHA.

Finally, signage along the landward portion of the buffer area is needed to make the public aware of the sensitive and easily disturbed nature of the CC zone. Such signage would help to protect the habitat of the CC zone so that it can best protect the Magnolia Marsh ESHA. This would be accomplished as part of an overall signage plan for the MTF site. However, no signage plan is required in the Specific Plan as proposed. If the Specific Plan were modified as suggested Section 3.4.6 Signs of the Specific Plan would be amended to include protective signage for the CC zone in the required Public Access and Recreation Signage Plan, and protection of the CC zone would be enhanced.

Burrowing Owl Surveys

As discussed in the LUPA findings, Burrowing Owls have the potential to be present on the MTF site. Overwintering burrowing owls were present at the site in 1993 and in 2006, however, there is no record of nesting on the site. The burrowing owl is considered a species of special concern, Priority 2 by the California Department of Fish and Wildlife. Nest and roost burrows of the Burrowing Owl in California are most commonly dug by ground squirrels, which are abundant in the MTF area. As a vacant, 29 acre site, there is a possibility for the presence of this species. To address the decline in burrowing owls in southern California, it is important to establish the presence or absence of burrowing owls on-site prior to any earth

disturbing activities. And, if any are discovered, to have a plan ready to implement to address their presence on-site. Burrowing Owl surveys are not required in the proposed Specific Plan. However, a modification is suggested to add a new Section 3.6.4 Burrowing Owl Surveys. This section would establish a procedure to identify the presence of any Burrowing Owls on-site and a procedure to follow should they be present.

Lighting

As discussed in the LUPA findings, because the MTF site is adjacent to the Magnolia Marsh ESHA, it is important that site lighting not disturb the ESHA. One of the less frequently reported impacts of human activity on the environment is the presence of artificial light. Lighting disrupts photosynthesis and the activities of insects, birds and other animals. Photosynthesis, the process by which plants grow, depends on day and night/light and dark. All animals depend on plants for their survival. Artificial light can disrupt critical behavior in wildlife. Entire ecosystems can be affected by artificial light. Artificial light can affect insect movement, foraging, reproduction and predation. This suggests that insect biodiversity loss and other impacts caused by artificial light can be mitigated with better managed lighting practices.⁶⁴

In order to protect the adjacent Magnolia Marsh ESHA, lighting related to the development that would be allowed by the proposed Specific Plan, should be down-directed and DarkSky approved. However, the Specific Plan does not address impacts of lighting on the Magnolia Marsh ESHA.

The proposed Specific Plan does not require that all on-site lighting be down-directed, shielded and DarkSky Approved, which is necessary to protect the habitat of the Magnolia Marsh ESHA from light pollution impacts. If the Specific Plan were modified to require down-directed, DarkSky Approved lighting for the MTF site in Section 3.9 and also in various locations in Volume 2 of the Specific Plan, it would protect the Magnolia Marsh ESHA from adverse impacts from site lighting, as required by the policies of the LUP that require protection of ESHA.

Walls and Fences Plan & Signage Plan

Fencing and signage will be necessary to protect sensitive habitat in the CC zone. Fencing will discourage trespass into the sensitive CC zone habitat by humans as well as domestic pets who can disturb the sensitive plants by crushing them or otherwise disturbing them. Signage advising of the sensitive nature of the CC zone and its role in protecting habitat, pursuant to an approved Signage Plan, will assist by making the public aware of the sensitive nature of the area and that it can easily be disturbed.

On-Site Replacement of Mature Trees

LUP Policy C 4.6.3 requires that if any mature trees are removed with new development, that they be replaced at a 2:1 ratio. All existing mature trees within the landscaped berm would be removed, but only the trees located in the proposed smaller Magnolia Park area would be replaced. Many more mature trees are present within the existing six acre landscaped berm

⁶⁴ <https://www.unep.org/news-and-stories/story/global-light-pollution-affecting-ecosystems-what-can-we-do#:~:text=And%20all%20animals%20depend%20on,insects%2C%20birds%20and%20other%20animals.>

located along Magnolia Street but would not be replaced ([Exhibit 10](#)) according to the Specific Plan language as proposed. In addition, there are mature trees along the MTF site's northern border, outside the berm area, that would be removed by the project contemplated in the Specific Plan. Mature trees serve a number of habitat functions, including nesting, roosting and cover for various bird species. And, due to their size and stature, large species trees are particularly effective in urban areas in regulating the microclimate, attenuating and filtering water, attenuating noise and improving air quality and sequestering carbon. Mature trees also provide a significant habitat resource, enriching biodiversity in urban areas and promoting access to nature. It is important to maintain the large trees on site by replacing all trees currently on site at a 2:1 ratio. As proposed, the Specific Plan would require replacement of only a fraction of the existing mature trees on site. In order to ensure consistency with the LUP, every mature tree at the MTF site must be replaced at a 2:1 ratio with 36" box trees.

In addition, especially due to the proximity to the HB Wetlands, it is important to assure that the replacement trees are not listed in the Cal-IPC invasive plant inventory. LUP Policy C 4.6.1 requires that landscaping adjacent to ESHA and wetlands be non-invasive. Any CDP application for development at the MTF site that includes removal of any mature trees on the MTF site must include a certified arborist's report and documentation of the number and type of trees present on the MTF site. The arborist's report shall provide recommendations for the types of replacement trees and locations for placement on the MTF site. Any CDP that includes development of Marsh and Magnolia Parks shall include a tree plan that, at a minimum, includes as many of the required 2:1 replacement trees as possible. All replacement trees shall be replaced on the 29 acre MTF site. As proposed, the Specific Plan does not include these requirements and so is inconsistent with and inadequate to carry out Policy C 4.6.3 of the LUP, and must be denied. However, if the Specific Plan is modified as suggested, it would be consistent with and adequate to carry out Policy C 4.6.3 of the LUP regarding replacement of mature trees, and with habitat protection policies of the LUP regarding prohibition of invasive species at the MTF site.

Informational Packets

The proposed Specific Plan would allow up to 250 new residences at the MTF site. As described earlier, the site is adjacent to the Magnolia Marsh ESHA and will include a buffer area. It is important that future new residents of the MTF site are made aware of potential harmful impacts to the ESHA from domestic animals and pesticide use. This could be accomplished by requiring information packets be distributed to all new residents with each purchase or rental of a home, as well as annually. The proposed Specific Plan includes a requirement for Information Packets, but it doesn't recognize the on-site CC zone as sensitive habitat deserving of protection, doesn't specifically prohibit plant species listed in the Cal-IPC Invasive Plant Inventory in landscaping throughout the Specific Plan area and it does not prohibit all non-native plant species and cultivars in the CC zone. It also does not require distribution of the Informational Packet to the hotel operator. However, if modified as suggested at Section 3.4.8 Resource Protection of the Specific Plan, the Specific Plan would require distribution of information packets, as described above, so that the sensitive habitats will be protected as required by the sensitive resource policies of the LUP.

CC&Rs

To ensure that the habitat of CC zone is well maintained over the life of the MTF development, modifications are suggested to include these requirements in the future residential development's Covenants, Conditions, and Restrictions (CC&Rs). The CC&Rs would describe the responsibilities of the HOA/PPOA (or similar entity) to monitor and maintain the habitat value of the CC zone. The CC&Rs shall make clear that the HOA/PPOA (or similar entity) shall actively ensure the continuance of the CC zone habitat. These modifications are located in Specific Plan Section 3.4.7 Covenants, Conditions, and Restrictions. If modified as suggested, the Specific Plan will be consistent with and adequate to carry out the habitat protection policies of the LUP.

Sensitive Habitat Conclusion

For the reasons discussed above, the Specific Plan is not consistent with LUP policies which require protection of sensitive habitat, and so must be denied. However, if the Specific Plan is modified as suggested, it would be consistent with these LUP policies.

6. Archaeological & Tribal Cultural Resources

LUP Policies:

- C 5 Promote the preservation of significant archaeological and paleontological resources in the Coastal Zone.
- C 5.1 Identify and protect, to the maximum extent feasible, significant archaeological, paleontological and historic resources in the Coastal Zone.
 - C 5.1.2 Where new development would adversely impact archeological or paleontological resources within the Coastal Zone, reasonable mitigation measures to minimize impacts shall be required.
 - C 5.1.3 In the event that any Native American human remains are uncovered, the County Coroner, the Native American Heritage Commission, and the Most Likely Descendants, as designated by the California Native American Heritage Commission, shall be notified. The recommendations of the Most Likely Descendants shall be obtained prior to the disposition of any prehistoric Native American human remains.
 - C 5.1.4 A completed archeological research design shall be submitted along with any application for a coastal development permit for development within any area containing archeological or paleontological resources. The research design shall determine the significance of any artifacts uncovered and make recommendations for preservation. Significance will be based on the requirements of the California Register of Historical Resources criteria, and prepared based on the following criteria:
 - a) Contain a discussion of important research topics that can be addressed; and
 - b) Be reviewed by at least three (3) County-certified archeologists (peer review committee).

- c) The State Office of Historic Preservation and the Native American Heritage Commission shall review the research design.
- d) The research design shall be developed in conjunction with affected Native American groups.
- e) The permittee shall comply with the requirements of the peer review committee to assure compliance with the mitigation measures required by the archeological research design.

C 5.1.5 A County-certified paleontologist/archeologist, shall monitor all grading operations where there is a potential to affect cultural or paleontological resources based on the required research design. A Native American monitor shall also monitor grading operations. If grading operations uncover paleontological/archeological resources, the paleontologist/archeologist or Native American monitor shall suspend all development activity to avoid destruction of resources until a determination can be made as to the significance of the paleontological/archeological resources. If found to be significant, the site(s) shall be tested and preserved until a recovery plan is completed to assure the protection of the paleontological/archeological resources.

The California coastal zone has been home to native populations for thousands of years. The history of colonization in California has led to the suppression of knowledge about tribal culture and cultural areas. If a property was developed prior to 1970, when CEQA was enacted, the property very likely would not have been inspected for the presence of archaeological and Tribal cultural resources and so the potential for the presence of buried cultural materials remains. Even when Tribal Cultural materials are not found in situ, they may still provide cultural meaning to local Tribes, meaning that even if land has been disturbed in the past, it is still important to include input from effected local tribes when earth disturbing development is proposed. Moreover, some areas, whether physical objects are present or not, can have significant cultural meaning for Tribal groups. It is the Commission's goal to ensure that tribes can participate meaningfully in land and ocean use decisions that have the potential to affect tribal resources and rights.

The LUP policies cited above require the protection of archaeological resources. Development that would be allowed by this LCPA will involve significant ground disturbance, including ground preparation and the import of fill to raise the site elevation by approximately 10-11 feet across much of the site. Any project that includes ground disturbance has the potential to impact archeological and Tribal cultural resources. An Environmental Impact Report (EIR) was prepared in conjunction with the proposed Specific Plan LCPA and the development it would allow. At the time of EIR preparation, the Native American Heritage Commission (NAHC) provided a Sacred Lands File (SLF) Search to the property owner regarding the possibility of Native American Tribal cultural resources and/or sacred places in the project vicinity. The NAHC's review determined there were no sites listed in the SLF on the MTF site. But the NAHC also noted in its response that the absence of archaeological features and Native American Tribal cultural resources from the SLF search does not preclude their existence at the site or in the surrounding area. A prehistoric shell deposit was identified within one mile of the project area. The NAHC recommended contacting local tribes with ancestral ties to the area. The property owner sent letters to the Native American groups listed on the NAHC contact list of Tribal representatives to notify them of the MTF project. In

response, the property owner consulted with representatives of the Gabrielleno Band of Mission Indians – Kizh Nation. During that consultation, the Tribal representatives recommended monitoring by both archaeological and Native American monitors during ground disturbing activities.

It has been approximately five years since initial requests for consultation were made in conjunction with the EIR. It is important that effected local Tribes again be invited to consult closer to the time of ground disturbance, but prior to any actual disturbance. The LUP policies cited above require monitoring by a qualified archaeologist and Native American monitors of all site grading. The Specific Plan anticipates a great deal of land movement as part of the development that would be allowed by the proposed Specific Plan.

In order to assure protection of any archaeological and Tribal cultural resources that have the potential to be present on the MTF site, the Specific Plan must include a requirement that any CDP application for development that includes ground disturbing activity at the MTF site include with the application submittal evidence of recent efforts to contact the appropriate Native American groups, responses received, and any requests for consultation, the results of that consultation, and summaries of the consultations (including consulting Tribal members contact information). Any concerns raised by the Tribes during consultation should be meaningfully considered. In addition, the CDP submittal must include a detailed written Cultural Treatment Plan for both archaeological and Native American monitoring of all ground disturbance at the site, and measures that will be implemented in the event resources are discovered. The Cultural Treatment Plan must be prepared by a qualified professional in consultation with the consulting Tribal representatives. As proposed, the proposed Specific Plan does not include this requirement. Without a requirement to address protection of archaeological and Tribal cultural resources in conjunction with the development allowed by the Specific Plan, the Specific Plan is inconsistent with and inadequate to carry out the cultural resource protection policies of the LUP and must be denied. However, if the Specific Plan IPA were modified to add cultural resource protection requirements, as suggested in the modification that would add new Section 3.13 Protection of Archaeological and Tribal Cultural Resources to the Specific Plan, the Specific Plan would be consistent with and adequate to carry out the cultural resource protection policies of the LUP.

7. Water Quality

LUP Policies:

C 6

Prevent the degradation of marine resources in the Coastal Zone from activities associated with an urban environment.

C 6.1

Promote measures to mitigate the adverse impacts of human activities on marine organisms and the marine environment through regulation of new development, monitoring of existing development, and retrofitting [when] necessary and feasible.

C 6.1.1

Require that new development include mitigation measures to enhance water quality, if feasible; and at a minimum prevent the degradation of water quality of groundwater basins, wetlands, and surface water.

C 6.1.2

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance.

C 6.1.4

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain organisms and for the protection of human health shall be maintained and, where feasible, restored.

C 6.1.6 (in pertinent part):

...
...

The City shall require that new development and redevelopment, as appropriate employ nonstructural Best Management Practices (BMPs) and structural BMPs designed to minimize the volume, velocity, and pollutant load of stormwater runoff, prior to runoff discharge into stormwater conveyance systems, receiving waters and/or other sensitive areas. All development shall include effective site design and source control BMPs. When the combination of site design and source control BMPs is not sufficient to protect water quality, structural treatment BMPs along with site design and source control measures shall be required. BMPs should be selected based on efficacy at mitigating pollutants of concern associated with respective development types or uses.

... Per program parameters, continue to require a Water Quality Management Plan for all applicable new development and redevelopment within the Coastal Zone, and include mitigation measures such as the following:

Regulating development to include the use of best available erosion and runoff control management techniques and BMPs designed to minimize pollutant loads contained in post-development peak runoff rate and average volume at levels similar to pre-development levels to the maximum extent feasible. Design elements and other measures shall be incorporated into new development and appropriate redevelopment in order to carry out the objectives specified herein, including implementation of measures required pursuant to the National Pollutant Discharge Elimination System (NPDES) Standards, and any amendment to or re-issuance thereof;

...
...
...

C 6.1.25

Require that new development and redevelopment minimize the creation of impervious areas, especially directly connected impervious areas, and, where feasible, reduce the extent of existing unnecessary impervious areas, and incorporate adequate mitigation to minimize the alteration of natural streams and/or interference with surface water flow. The use of permeable materials for roads, sidewalks and other paved areas shall be incorporated into new development to the maximum extent practicable.

LUP Policies C 1.2 and C 1.4 require that marine resources be maintained, enhanced, and where feasible, restored and that the biological productivity and quality of coastal waters be protected. The City's certified LUP includes policies regarding protection of water quality and marine resources, and that these goals be achieved through development design and application of Best Management Practices (BMPs).

The development that would be allowed by the proposed Specific Plan has the potential to adversely impact coastal water quality through the introduction of impervious surfaces, increases in runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, sediments, metals, cleaning products, and pesticides at the subject site. Assuring water quality protections at the MTF site is especially important due to its proximity to Magnolia Marsh.

Under existing conditions, no runoff leaves the site during most rainfall events. However, the proposed fill of the property as well as installation of impervious surfaces and activities associated with residential and commercial development and related hardscape represent a potentially significant impact to water quality downstream of the project, which includes Magnolia Marsh and the other wetlands of the Huntington Beach Wetland Complex, and the ocean. These downstream areas are likely to suffer increases in water quality impairment when site development produces greater volumes and velocities of runoff as well as introducing increased pollutant loads. It is important that future development as allowed by the proposed Specific Plan addresses potential adverse impacts arising due to post development runoff into the flood control channel, marsh and significant water bodies downstream. This is especially true because little or no runoff currently leaves the site during most rainfall events.

To address these water quality concerns and to protect water quality as required by the LUP policies cited above, a detailed Water Quality Management Plan (WQMP), must be provided for future development. The WQMP would need to identify Best Management Practices (BMPs) to protect and enhance water quality at the subject site and surrounding vicinity. The future WQMP should emphasize site design and source control (with non-structural preferred, but structural also an option), and finally treatment control BMPs. At a minimum, the required WQMP shall infiltrate, harvest and reuse, evapotranspire, or treat, the 85th percentile, 24-hour storm event (Design Capture Volume).

Examples of site design BMPs that could be incorporated into a future WQMP for the MTF site include: conservation of natural areas; use of pervious trails within the OS-P designated areas and elsewhere within the MTF site; use of native and drought-tolerant landscape materials and efficient irrigation practices and minimization of impermeable areas. The

proposed CC zone adjacent to the flood control channel is a good example of a site design BMP.

Examples of non-structural source control BMPs that could be incorporated into a future WQMP for the MTF site include: adding requirements in CC&Rs that future residential development: 1) provide water quality education and information to owners and occupants of the project; 2) provide trash management and litter control procedures, 3) maintain, inspect and clean all drainage systems, streets, and catch basins on the property prior to storm season, 4) provide and maintain efficient irrigation and proper landscape practices, 5) provide maintenance of all erosion control devices on the property. Other non-structural source control BMPs could include: limiting use of fertilizers and pesticides to prevent or reduce their introduction into the drainage system and ultimately the marshes; employee training so that employees are made aware of the required BMPs; and regular street sweeping.

Examples of structural source control BMPs that could be incorporated into a future WQMP for the MTF site include: catch basin stenciling informing people that the basin drains to the marshes and ocean; water efficient landscape and irrigation practices including water sensors and use of programmable irrigation times; and for common area landscaping - planting material with similar water requirements together to reduce excess irrigation runoff and promote surface infiltration.

In addition, various structural treatment BMPs could be included in a future WQMP for the MTF site, such as installation of storm water treatment devices (CDS or equivalent) to remove petroleum, trash, debris, and coarse sediment from dry weather nuisance flows and first flush flows prior to draining into the flood control channel and marsh. Or other treatment BMPs could be identified based on specific development proposals. In addition, the WQMP for the MTF site should also include some form of groundwater monitoring to assess whether any contaminants from the Ascon site have migrated onto the MTF site. This could be addressed by implementing the property owner's proposal to install soil vapor monitoring probes on-site.

The preparation and implementation of an appropriate WQMP specific to the MTF site will help to reduce impacts to water quality and the marine environment that could otherwise result from site development. The Specific Plan discusses water quality but does not specifically require a WQMP be submitted with any CDP proposed for commercial or residential development at the site. More specifically, a WQMP prepared for the MTF site must infiltrate, harvest and reuse, evapotranspire, or treat, the 85th percentile, 24-hour storm event (Design Capture Volume). A WQMP is necessary to assure that future development allowed by the proposed Specific Plan would be consistent with the LUP policies regarding protection of water quality and marine resources. As proposed the Specific Plan is inconsistent with and inadequate to carry out these LUP policies and must be denied. However, if the Specific Plan were modified as suggested at Section 4.4.2 Water Quality Management to require a WQMP for the MTF site with any CDP application, it would be consistent with and adequate to carry out the water quality and marine environment protection policies of the LUP. Therefore, only if modified as suggested, can the Commission find the LUPA consistent with and adequate to carry out these LUP policies.

8. Housing

Although not part of its original submittal, the City now proposes to revise the version of the MTF Specific Plan that it originally submitted in order to require that 20% of all units permitted at the MTF site be affordable to lower income households and that at least half of these units be made available to hotel employees on a first right of refusal basis. The City also proposes to revise the Specific Plan with additional requirements to implement these affordable housing provisions. First, the proposed revisions require all affordable units to be located onsite and made available to lower income households for a minimum term of 75 years. Of the total affordable units, the proposed revisions require that a minimum of 10% of units be provided to extremely low income households and at least 30% of units be provided to very low income households. Projects with more than 20 units, including the contemplated affordable housing structure, are also required to include at least one amenity, such as a clubhouse, swimming pool, tennis court, volleyball court, outdoor cooking facility, or other recreation facility. The proposed revisions also require the master developer, affordable housing developer, and the City to record an Affordable Housing Agreement as a covenant running with the land that outlines all aspects of the affordable housing obligations, including, but not limited to, the affordability term for the restricted units and the right of first refusal for employees. Finally, the proposed revisions include a number of definitions and other requirements that clarify implementation of the affordable housing provisions. These proposed revisions are reflected in suggested modifications to Specific Plan Volume I, Section 3.8 and Volume II, Section 5.1.1.

These affordable housing requirements of the MTF Specific Plan are consistent with the LUP requirement that 20% of all units permitted at the MTF site be affordable to lower income households and that at least half of these units be made available to hotel employees on a first right of refusal basis. These policies also align with a variety of other LUP policies. Like the Coastal Act, the LUP contains policies referenced in the sections above that protect and encourage public access and recreation (see, e.g., Policies C 2, C 2.5, C 2.6, C 2.6.6, C 3, C 3.2). In particular, Policy C 1.1.5 states in relevant part: New residential development should be sited and designed in a manner that it maintains and enhances public access to the coast. The Specific Plan facilitates access to the coast for lower income households, who face historic and current day barriers to living near and accessing the coast, by requiring 20% of all residential units provided at the MTF site to be affordable to lower income households. Like the Coastal Act, the LUP also contains policies that encourage and prioritize visitor serving uses (see, e.g., Policies C 1.1.3, C 1.1.5, C 3.2, C 3.2.4). The Specific Plan requirement that at a minimum 50% of affordable units be made available to employees generally aligns with the LUP goals of prioritizing visitor serving uses and promoting public access to the coast for visitors. This requirement can help ensure that there are adequate employees to staff the visitor serving uses planned for the site by providing affordable housing to employees in an area with high housing costs. In sum, the Specific Plan policies relating to affordable housing align with a variety of LUP policies, including those relating to public access and recreation and visitor serving uses.

9. Misc. Suggested Modifications Needed

Finally, some modifications are needed for administrative reasons. These include suggested modifications to clarify that the standard of review for changes to the Land Use Plan is the

Coastal Act and for the Implementation Plan (Specific Plan) is the LUP, and also when an amendment is required for the LUP and for the IP (Specific Plan). Also some suggested modifications make minor changes for consistency throughout the Specific Plan.

Volume 3 of the Specific Plan describes how the Specific Plan as approved by the City is consistent with the LUP and the City's General Plan. However, as outlined herein, a number of suggested modifications are necessary to bring the Specific Plan into conformance with the LUP, meaning Volume 3 does not serve any purpose. A suggested modification would delete Volume 3 from the Specific Plan.

IV. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local governments from the requirement of preparing an Environmental Impact Report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of an LCP. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an EIR for each LCP. However, the City did certify an EIR for the proposed Specific Plan. The EIR was submitted to the State Clearinghouse and made available for public review on the City's website and at the City of Huntington Beach Department of Community Development.

Nevertheless, the Commission is required in approving an LCPA submittal to find that the LCP as amended does conform with the provisions of CEQA, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment [California Code of Regulations Sections 13542(a), 13540(f), and 13555(b)].

As outlined in the findings above, which are incorporated in these CEQA findings in full, the LUP amendment, as proposed, would not be consistent with the hazard, public access and recreation, or sensitive habitat policies of the Coastal Act. And the IP amendment, as proposed, would not be in conformance with or adequate to carry out, the hazards, sensitive habitat, and public access and recreation policies of the certified Land Use Plan. Therefore, the Commission finds that approval of the LCP Amendment, as proposed, will result in significant adverse environmental impacts within the meaning of CEQA and that modifications, for the reasons stated in these findings, are necessary to avoid the significant effects on coastal resources that would occur if the project were approved as proposed. With the suggested modifications, the LUP is consistent with the Coastal Act's Chapter 3 policies and the Specific Plan conforms with the LUP; as such, there are no remaining significant environmental effects of the project. The Commission finds that the proposed LCP amendment, if modified as suggested, is consistent with Section 21080.5(d)(2)(A) of the Public Resources Code and all applicable requirements of CEQA.