

CHATDEN-BROWN & CARSTENS LLP

2200 PACIFIC COAST HIGHWAY

SUITE 318

HERMOSA BEACH, CALIFORNIA 90254

www.cbcearthlaw.com

TELEPHONE:(310) 798-2400
FACSIMILE: (310) 798-2402

E-MAIL:
MNB@CBCEARTHLLAW.COM

September 15, 2017

Mr. Craig Chalfant, Senior Planner
Development Services Department
City of Long Beach
333 West Ocean Boulevard
Long Beach, CA 90802

Via email craig.chalfant@longbeach.gov

Re: Southeast Area Specific Plan (SEASP) 2060 Supplemental Comments

Dear Mr. Chalfant:

We submit this letter on behalf of the Los Cerritos Wetlands Land Trust (LCWLT) regarding the Southeast Area Specific Plan (SEASP) 2060 to provide additional comments on the Plan, its Final EIR and Findings. LCWLT supports the City's comprehensive long range planning goals, especially those seeking to increase environmental sustainability and to protect and restore Los Cerritos Wetlands. Changes made to the draft SEASP by the Planning Commission are a step in the right direction,¹ but do not include all feasible mitigation in the form of further reduced land use allocations and policies. Additional changes to the SEASP are required to provide all feasible mitigation for the numerous significant environmental unavoidable impacts that will result from the implementation of the SEASP, even under the Reduced Density Alternative.

I. Summary of LCWLT Comments.

LCWLT ultimately believes the adoption of a new specific plan for the SEASP Area is warranted as the SEADIP does not reflect current policy or community vision. However, unless additional changes² are made to SEASP, adoption should be delayed until the General Plan Update is completed. Proposed changes that would provide additional feasible mitigation for impacts to traffic, air quality, and greenhouse gas

¹ For example, inclusion of leading edge bird safe measures, inclusion of the wetlands-friendly plant palette, and the establishment of a wetlands conservation and mitigation fund to offset impacts unforeseen or difficult to calculate at the specific plan level.

² See Attachment 1 for Summary of Additional Mitigation Measures Recommended by the LCWLT.

emissions and to the wetlands include:

- Further reduced density in the form of an “interim baseline cap” (subject to adding growth pursuant to the General Plan Update and additional traffic and other analysis and conditions such as community benefits);
- Lower height limits³;
- Guarantees of integrity of buffer areas abutting wetlands;
- Integrity of public open space; and
- Development of an urban-wetland/open space interface plan specifying wetlands to be protected and 100-foot buffer areas with public access/passive recreation beyond the wetlands and buffers.

LCWLT’s recommended additional mitigation measures are detailed further in Attachment 1 to this letter.

A. SEASP 2060 is Already Out of Date.

The proposed draft SEASP is an ambitious update of the 1977 SEADIP and is intended to provide the framework and guidance for growth, conservation and development in the SEASP Area through 2060. The Plan is ambitious because SEASP seeks not only to update the policy frame for this unique and environmentally sensitive area, but also to dramatically change the amount and type of development allowed in a concentrated area of approximately 85 acres, referred to as the Areas of Change (see Figure 4-1, SEASP). Only about 85 acres are located in the Areas of Change. Significantly fewer than 85 acres are actually developable under SEASP due to setbacks, required open space areas, and the 2nd + PCH project’s approval in advance of SEASP. The vast majority of the SEASP area will remain in existing uses. Only about 85 acres are located in “Areas of Change.” Here, SEASP is disappointing because it fails to provide clear guidance on conservation areas, wetlands and buffers, or a SEASP-wide urban-wetlands/open space interface plan to provide passive public recreation and access. Nor does the development plan for SEASP’s concentrated Areas of Change provide a clear vision with compelling incentives. The General Plan Update process provides the opportunity to fill these gaps in addition and address other omissions in the SEASP that require planning during the life of SEASP (e.g., net zero requirements on all buildings⁴,

³ Lower heights are essential for bird safety in this important flyway between Ocean, Bay and Wetlands.

⁴State law requires new residential uses to be “net zero” energy by 2020 and non-residential uses

autonomous vehicles including shuttles lowering the need for parking⁵).

B. General Plan Update Implications.

In seeking to change the amount and type of development in the Areas of Change, the City's SEASP EIR evaluated a wide range of alternatives. The Proposed Project seeks to increase residential units by over 5,000 units, accommodating over 40% of planned population growth in Long Beach by 2040. The Reduced Project Alternative would increase residential units by over 1,500, accommodating over 20 percent of the City's entire housing forecast. Dwelling units allowed under both the Proposed and Reduced Project Alternatives do not include density bonus and other accessory uses essentially allowed "by right" in California.⁶

Complicating the City Council's choice of alternatives is the City's concurrent Update of the General Plan. Ideally, the appropriate redistribution of land use – housing and employment – would be made in a citywide planning process such as the General Plan. Given the General Plan Update is underway, LCWLT believes that the draft SEASP and its EIR should be used to inform the General Plan Update. SEASP should be finalized following that update. Another compelling reason for this sequence is legal; the City's General Plan is defective in ways implicated by the SEASP, as discussed further below.

C. Remaining SEASP Deficiencies.

Although LCWLT appreciates the City's updates to SEASP thus far, the Plan's continuing deficiencies include:

- Allowing more new development than the roadway infrastructure and environment can accommodate – even under the Reduced Density Alternative and trip allocation scheme.

"net zero" by 2030. Net zero energy buildings are feasible now, particularly in climate zones such as Long Beach (See, https://www.energydataweb.com/cpucfiles/pdadocs/904/california_zne_technical_feasibility_report_final.pdf). As such, the SEASP should include a policy requiring ALL new construction to be net zero energy by 2020. Publication (https://www.energydataweb.com/cpucfiles/pdadocs/904/california_zne_technical_feasibility_report_final.pdf) incorporated by reference.

⁵ Early predictions are that vast areas used for parking will no longer be needed with automation of our transportation system. Autonomous cars are already being tested in urban areas of California.

⁶ Conservatively, this could increase residential units under an approved SEASP by 35 percent.

- Deferring wetland delineation to specific projects, rather than using an updated wetland delineation to demarcate minimum setbacks, buffers and a proposed urban-open space/wetland interface SEASP area-wide. (See SEASP 5.8, page 80 and 5.11, page 81.)
- Allowing uses in the 100-foot wetland buffer area. (See SEASP at page 80.)
- Permitting building heights over 3 stories, with up to 7-stories allowed if development includes additional common open space, additional public parking, purchase of wetland mitigation bank credits, purchase of wetland acres, installation and maintenance of enhanced landscaping in parkways or medians. (See SEASP at page 74.)
- Allowing required “usable” open space to be used for commercial and private purposes within development projects, including indoor gyms, balconies, and porches. (See page 76 of the SEASP.)

For the reasons set forth in this Supplemental Letter, LCWLT supports delaying the adoption of the SEASP until the General Plan Update has been completed and changes in allowable land use have been determined citywide. If, however, the City Council chooses to adopt SEASP prior to the completion of the General Plan Update, LCWLT believes the changes outlined below should be made to the SEASP in order to provide all feasible mitigation for numerous unavoidable and significant environmental impacts.

D. LCWLT-Proposed Additional Mitigation Measures to SEASP.

1. Mitigation Proposal: Land Uses

The central component of LCWLT’s SEASP mitigation proposal is a further reduced density alternative or “baseline cap” or “interim baseline cap”⁷. Reducing allowable development density and intensity is a feasible means of reducing numerous significant and unavoidable environmental impacts. As proposed, the cap would remain in place unless the General Plan update process supports further increases in development density and intensity. Under an interim baseline cap, additional development density and

⁷ Establishing a baseline cap reflecting the environmental and infrastructure constraints in the SEASP area makes sense. As part of the General Plan update underway, the baseline cap could be considered for adjustment to allow additional development subject to robust community dialogue and landowners/developers volunteering additional community benefits.

intensity could be considered in the General Plan update subject to a policy requiring any additional development be conditioned on delivering “community benefits.”

The interim baseline cap would be the capacity of total allowable net new density⁸ and intensity for the SEASP area unless and until the General Plan process provides additional information, analysis and support for more development in the SEASP area.

A proposed baseline cap could look like this:

Interim Baseline CAP Proposal by Land Trust Comparison to EIR Alternatives					
Allowable Under Alt	Interim Baseline CAP: Land Trust proposal	Proposed Project (Source: EIR)	No Project/No Development (Source: EIR)	Reduced Intensity (Source: EIR)	Adopted PD- 1/Current SEADIP (Source EIR)
Commercial/Employment SF	2,191,746 (inc of 100,000 sf over existing)	2,665,052	2,091,476	2,398,547	3,106,610
Hotel Rooms	375 (no increase)	425	375	375	375
Dwelling Units	5,079 (increase of 1,000 DU over existing)	9,518	4,079	6,663	5,499

Reasons for adopting an interim baseline cap approach include:

- The City’s General Plan is currently out of date, lacks content required by state law, and is defective in aspects implicated by SEASP. SEASP also requires a major General Plan amendment, Zoning Code amendment and LCP Amendment. Given that a General Plan update is now underway, and SEASP cannot be lawfully approved given the current defects in the City’s General Plan, it only makes sense to adopt the SEASP policies and baseline cap to set allowable density and intensity increases, until the General Plan update is completed, as an incremental step toward bringing the area’s specific plan up to date.
- The Proposed SEASP Project – at 9,518 housing units – would provide 43.2 percent of the forecast housing growth through 2040 for the entire City IN THE SEASP area. Under the Reduced Density alternative, the SEASP Area would still accommodate more than its fair share of new housing and employment growth based on the limited number of developable acres in the Areas of Change.

⁸ In addition to redevelopment of existing uses such as hotels.

(Source: CEQA Findings, page 32, Exhibit D.) The SEASP Area is both environmentally sensitive and unique in its resource values and constraints, which include road capacity. The allocation of such a significant amount of new household growth to this specific plan area, along with significant commercial/employment, is premature. Setting a baseline cap at 1,000 new units for the SEASP Area until the General Plan update is completed and allowing for a citywide discussion of the appropriate distribution of this growth allows sensible planning.

- A baseline cap for commercial/employment square feet below the current SEADIP/Zoning is warranted because the current SEADIP is out of date and out of sync with current market conditions and environmental conditions. The amount of allowable commercial and retail use in SEADIP reflects outdated market conditions. Sufficient hotel units are available for redevelopment, and other areas of the City are more suitable for significant amounts of new development, jobs and housing.
- Significant and unavoidable environmental impacts from SEASP warrant consideration of much lower development allocations. Current traffic congestion conditions must be addressed before making such conditions significantly worse; the General Plan update is the process to address this constraint.
- The consideration of additional density or intensity above baseline cap in the General Plan update provides an opportunity to further evaluate additional feasible mitigation measures to further reduce SEASP's significant unavoidable impacts including, but not limited to, air quality, traffic, and greenhouse gas emissions.

2. Additional Mitigation Measures (Policy Proposals).

LCWLT supports the Planning Commission's proposed policy additions to SEASP, the expanded bird-safe measures, plant palette, and wetland conservation and mitigation fund. In addition to establishing an "interim baseline cap" on new development for the Areas of Change, LCWLT believes the following feasible mitigation measures, in the form of modified policies, should be included by the City Council:

- 1) MODIFIED POLICY AND PROVISIONS: Heights: Among the essential and feasible mitigation measures to protect the bird flyway between ocean, bay and wetlands in the SEASP Area are lower building heights. Therefore, buildings above five-stories shall be prohibited in the SEASP area. Buildings adjacent to wetlands shall not exceed 3 stories in height (see also below). This would modify Table 5-4 Building Story Requirements and section g at page 71, among other

provisions, in the draft SEASP.

- 2) MODIFIED POLICY AND PROVISIONS: LCWLT supports public access in the SEASP area. However, trails and public access shall be prohibited in wetlands and buffer areas. Modifies provisions at SEASP page 76, among others. NEW POLICY: A new policy and implementation measure should be added to the SEASP providing that: Prior to issuance of ANY new building permit under the SEASP, a SEASP area-wide wetlands avoidance, stakeholder engaged public access plan shall be adopted, specifying for each development property (approximately 85-acre area) and SEASP-wide, the area on each parcel to be set aside for public access; again beyond any wetlands and buffer areas.
- 3) MODIFIED POLICIES AND PROVISIONS: Buffers on properties adjacent to wetlands shall be a minimum of 100 feet in width, with buffers to remain natural areas. Passive recreational uses, including bird watching, walking, jogging, and bike riding shall be permitted beyond the 100-foot setback along the edge of parking or structures. Should a 100-foot buffer be infeasible due to site specific conditions, any proposed buffer of area less than 100 feet shall require: (1) a finding by the City Council that the setback is not feasible and; (2) a contribution to the Wetland Conservation and Monitoring sufficient to acquire and permanently protect an equivalent number of acres lost due to a smaller buffer.
- 4) MODIFIED POLICY AND PROVISIONS: Usable Open Space shall be a minimum of 20% of a development site and shall be defined as publicly usable open space, not including areas inaccessible to the public, including, but not limited to: courtyards, balconies, decks, indoor gyms, and patios. This would modify provisions at page 76 of the SEASP and Table 5-9, among other provisions.
- 5) NEW POLICY: New development in the Areas of Change shall be required to submit a view line analysis demonstrating that building siting, heights and structural elements (e.g., elevators, rooftop equipment and architectural features) do not interfere with – and ideally enhance – views of coastal resources including the water, wetlands and natural areas and landforms. Insert at SEASP page 76-77.

II. The SEASP Cannot Lawfully Be Approved.

The City is currently operating with an inadequate General Plan. Elements of the General Plan are outdated, uncorrelated, and internally inconsistent. State law prohibits the adoption of plans and projects that are inconsistent with the General Plan and that implicate general plan inconsistencies and inadequacies. The adoption of SEASP, even

with proposed General Plan and LCP amendments, implicates numerous General Plan deficiencies, including, but not limited to, the lack of correlation between the Land Use and Mobility elements and the lack of current contours in the Noise Element. The General Plan's land use and mobility elements are presently uncorrelated. If approved, SEASP would generate thousands of new vehicle trips per day, thereby implicating this General Plan inadequacy. Thus, the City is precluded from adopting SEASP until these General Plan deficiencies are corrected -- ideally on a citywide basis.

These deficiencies are not insurmountable, and LCWLT recognizes that the City has already begun the planning and environmental studies needed to restore General Plan consistency and bring it into compliance. The correction of these General Plan inadequacies will also require revisions to the environmental impact reports and underlying technical studies prepared in support of the General Plan element updates and SEASP so that all the documents are consistent and in compliance with the California Environmental Quality Act (CEQA).

Finally, SEADIP also serves as the local coastal program (LCP) for southeast Long Beach. The approval of SEASP will require amendments to the City's LCP. The amendment of the LCP requires public notice and review, as well as the concurrence of the Coastal Commission. LCWLT requests that the City release these amendments for public review and comment as part of the SEASP approval process rather than following the approval of the SEASP.

A. The General Plan is the Constitution for All Future Development in the City of Long Beach.

A city's general plan is the ““constitution” for future development” located at the top of “the hierarchy of local government law regulating land use.” (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773.) All land use approvals must be consistent with the general plan. (*Ibid.*) A project is not consistent with the general plan unless it furthers its goals and policies. Accordingly, any project that obstructs implementation of the general plan's goals and policies is inconsistent with the general plan and may not be lawfully approved. (*Napa Citizens for Honest Gov't v. County of Napa* (2001) 91 Cal.App.4th 342, 378; *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336.) Affected projects include land use plans such as SEASP. (*Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 782; Gov't Code § 65454.)

The most recent discussion draft of SEASP recognizes these consistency requirements, stating, “The law allows the preparation of specific plans as required for the implementation of the general plan. Specific plans act as a bridge between the

general plan and individual development proposals.” (SEASP May 2017 Discussion Draft, p. 189.) SEASP aspires to “implement” the goals and policies of the City’s 2030 General Plan update.” (*Id.*, p. 8.)

SEASP further notes:

[A] Specific Plan shall include a statement of the relationship of the Specific Plan to the General Plan, and further, that it may not be adopted or amended unless found to be consistent with the General Plan.” The Specific Plan document has been designed to be consistent with the City of Long Beach General Plan goals and policies.

In response to government requirements, this Specific Plan has been prepared to provide an essential link between City of Long Beach policies and development in the Specific Plan area. Functioning as a regulatory document, Southeast Area Specific Plan provides a means of implementing the City of Long Beach General Plan and detailing specific requirements and guidelines for future development in the Specific Plan area. In this regard, all future development plans, tentative parcel, and/or tract maps or other similar entitlements shall be consistent with regulations set forth in this document and with all applicable City regulations.

(*Id.* p. 10.) It is thus imperative that SEASP/SEADIP be consistent with the General Plan, although this is not currently the case. Fortunately, the City’s concurrent revision of the General Plan’s Land Use and Urban Design Element and SEADIP (through SEASP) provide a unique opportunity to resolve these inconsistencies and improve overall sustainability in the City.

B. New Project Approvals Cannot Occur When a General Plan is Inadequate.

The adequacy of the general plan is paramount. As the constitution for future development, the general plan must be comprehensive and long term. State law requires a general plan to contain certain elements and meet certain requirements. (Gov’t Code §§ 65300 *et seq.*; *Camp v Board of Supervisors* (1981) 123 Cal.App. 3d 334, 348.) Some elements, such as the required housing element, must be updated frequently. A general plan’s land use element must contain standards of population density and building intensity. (*Twain Harte Homeowners Association v. County of Tuolumne* (1982) 138 Cal.App.3d 664, 699; Gov’t Code § 65302.) The policies and elements contained within a general plan must also be internally consistent, or “correlated,” if they are to be implemented. (*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 99-103; Gov’t Code § 65300.5.) The City has recognized that its General Plan is currently inadequate. (June 2, 2017 Memorandum, Attachment 2.)

The consequences of an inadequate general plan are severe. A city cannot approve a new development project that “implicates” key defects in the general plan. (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1188.) Key defects of the City’s General Plan include land use and mobility elements that are not properly correlated and the omission of required information concerning public safety and sea level rise. Any approval made pursuant to an inadequate general plan is considered invalid at the time of approval. Thus, any approval that implicates the defects of the inadequate general plan or its uncorrelated elements is unlawful. City approvals cannot resume until the general plan is amended to remove defects and provide consistency.

C. The City’s General Plan is Inadequate.

On June 2, 2017, the Director of Development Services provided a memorandum to the mayor and members of the City Council concerning the update of the General Plan’s Land Use and Urban Design Element. This memorandum admits:

The current update of the Land Use and Urban Design ***Elements is necessary to meet legal mandates for a current General Plan consistent across all of its Elements.*** More broadly, the update is an important opportunity for the City to meet its housing, economic, and sustainability goals.

(Attachment 2, p. 1, emphasis added.) The existing 2030 General Plan is inadequate.

The 2040 General Plan update’s goals include ensuring fair and equitable land use and the provision of reliable public facilities and infrastructure. (*Ibid.*) The General Plan update is also concerned with accommodating growth and housing. (*Id.* p. 3.) The Memorandum describes a declining retail market and the obsolescence of commercial strip centers, noting the City’s Economic Blueprint focus to “modernize land use regulations, entitlement, and permitting processes to reflect new economic opportunities”. (*Id.* p. 8.) According to the Memorandum, “Improvement in jobs and housing production is not possible without changes to the General Plan to improve the development process and provide additional height, intensity and flexibility to potential businesses and developers.” (*Ibid.*)

Here, by the City’s own admission, the General Plan is legally inadequate. (Attachment 2.) At the time of the Planning Commission’s consideration of SEASP, the Long Beach General Plan was comprised of the following elements:

- Land Use Element, last updated in 1989;
- Mobility Element, last updated in 2013;
- Housing Element, last updated in 2014;
- Scenic Routes, last updated in 1975;
- Historic Preservation element, last updated in 2010;
- Public Safety Element, last updated in 1975;
- Conservation Element, last updated in 1973; and
- Open Space Element, last updated in 2002.

1. Land Use and Urban Design Element.

Since the City of Long Beach last updated its Land Use and Urban Design Element in 1989, California has mandated the inclusion of numerous legal requirements⁹. These requirements are not met by the 2030 General Plan. For example, the existing Land Use Element lacks consistent and adequate population data and related planning projections or consistent standards for population density and building intensity throughout the General Plan. The inadequate data extends to the Land Use and Housing Elements and the assumptions underlying the Mobility Element.¹⁰ Notably, despite being an important limit on land use development in Southeast Long Beach, the existing Land Use Element fails to mention Los Cerritos Wetlands.

The inadequate and extremely dated Land Use Element means that the City cannot lawfully approve any development that implicates its deficiencies. This includes any development that will have large population increases, any development that will generate traffic, noise and environmental justice issues, and any development that will involve Los Cerritos Wetlands and its surroundings. The 2017 General Plan Guidelines implement Government Code § 11135's commitment to environmental justice through focuses on healthy communities and equitable opportunities. (See, http://www.opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf, pp. 7-8.) The existing General Plan does not satisfy these requirements, and SEASP is implicated.

⁹ The State of California has recently amended its General Plan Guidelines, available at http://www.opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf, Attachment 3 (excerpts). The 2017 General Plan Guidelines are heavily-focused on meeting state climate goals and legislation, healthy communities, and environmental justice. (*Id.* pp. 609.) LCWLT recognizes that these policies are not binding on existing General Plan elements, but they must be applied to General Plan updates that are currently in-progress, as well as those necessary to achieve internal consistency and correlation requirements.

¹⁰ Assumptions concerning land use underlying the Mobility element and its environmental document are not consistent with the City's outdated Land Use Element or the Housing Element.

2. Mobility Element.

Among the essential requirements for Mobility Elements (Infrastructure or Circulation Elements), is that they be correlated with the Land Use Element. The current General Plan does not satisfy this requirement. The Land Use Element was last updated in 1989. Since that time there have been numerous Element updates, including the City's Housing Element, that impact the adequacy of the Mobility Element. The land uses described in the 1989 Land Use Element are not correlated with the 2013 Mobility Element's circulation plans. As SEASP will add thousands of daily trips to the City's roads, the project would implicate the lack of correlation between Land Use and Mobility Element and cannot lawfully be approved.

The Mobility Element asserts consistency with the Land Use element, but these elements are not correlated as legally required. The Mobility Element cannot both be consistent with and correlated with the 1989 land use element for the SEADIP area and the much higher densities and intensities that would be allowed by the SEASP if approved, particularly within the broader context of the City's and region's transportation and mobility system.

Finally, the Mobility Element fails to address the increases in traffic associated with delivery or distribution of food, goods and services and changing trends in terms of driving habits (e.g., emergence of Uber and ride sharing services). These trends, among others, require the 2013 Mobility Element to be updated to reflect changing trends and related traffic, as well as changed land uses.

3. Public Safety Element.

The City's 1975 Public Safety Element is also deficient in that it fails to discuss sea level rise and its obvious public safety implications, despite the fact that Long Beach is situated directly on the coast. Thousands of City residents will be immediately impacted by sea level rise and any corresponding increase in the severity of king tides and storm surge. The State of California has adopted recommendations for addressing Sea Level rise in plans and permits: <http://www.opc.ca.gov/climate-change/updating-californias-sea-level-rise->; and: guidance http://www.opc.ca.gov/webmaster/ftp/pdf/docs/2013_SLR_Guidance_Update_FINAL1.pdf.

California's 2017 General Plan Guidelines acknowledge that "Increases in average temperature, a greater incidence of extreme weather conditions, and sea level rise all will not only exacerbate existing hazards mentioned in this section, but may also create new hazards where none previously existed. (2017 General Plan Guidelines p. 147, http://www.opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf.) The Guidelines prescribe,

“Jurisdictions must identify a set of adaptation and resilience goals, policies, and objectives, based on the information analyzed... for the protection of the community.” (*Id.* at p. 157.) The Guidelines require inclusion of the following information in the discussion of climate change risk:

1. Feasible methods to avoid or minimize climate change impacts associated with new uses of land. These include, but are not limited to, flooding, fire, extreme heat, sea level rise, runoff, risk, etc. This should not just capture new risks, but also risks exacerbated by climate change.
2. The location, when feasible, of new essential public facilities outside of at-risk areas, including, but not limited to, hospitals and health care facilities, emergency shelters, emergency command centers, and emergency communications facilities, or identifying construction methods or other methods to minimize damage if these facilities are located in at-risk areas.
3. The designation of adequate and feasible infrastructure located in an at-risk area. Meaning, any new infrastructure should be built to withstand the identified risk.
4. An approach (guidelines) to working cooperatively with relevant local, regional, state, and federal agencies...
5. The identification of natural infrastructure that may be used in adaptation projects. Where feasible, the plan shall use existing natural features and ecosystem processes, or the restoration of natural features and ecosystem processes, when developing alternatives for consideration...

(*Id.* at pp. 157-158.) Information about the hazards of climate change and sea level rise must be disclosed and incorporated into the Public Safety Element.

SEASP provides for development abutting Los Cerritos Wetlands and Alamitos Bay in areas that will likely experience rising sea levels, thereby implicating the City’s inadequate Public Safety Element. Cal-Adapt maps predict significant inundation in the SEASP Area with even the low sea level rise predictions. (See, <http://cal-adapt.org/tools/slr-calflo-3d/>, herein incorporated by reference.) Neither the General Plan nor the proposed SEASP contain adequate policy direction to address sea level rise and other public safety matters. Without a General Plan Safety Element Update, and correlated policy in the SEASP, the SEASP cannot be lawfully approved.

4. Noise Element.

The Noise Element of the City's General Plan must identify and appraise noise problems in the community and identify the sources of such noise as a guide for establishing a pattern of land uses that minimize exposure. Updates to dated noise contours must be included in the Noise Element. Here, the element is out of date and inadequate and must be revised before SEASP can be approved.

5. Conservation Element.

At 44 years old, the City's 1973 Conservation Element is woefully out of date. Despite the importance of Los Cerritos Wetlands to the City, its wildlife, and the City's ability to meet climate goals, the document does not even define wetlands. Moreover, the Conservation Element must address flood corridors and flooding. Under flood control legislation enacted in 2007, flood corridors, riparian habitat, and land that might accommodate floodwater must be addressed. SEASP would govern development in Los Cerritos Wetlands and implicates these and other deficiencies in the Conservation Element. The 2017 General Plan Guidelines also provide, "Rivers, lakes, streams, bays, harbors, estuaries, marshes, and reservoirs might be affected by climate change impacts such as decreased snow pack, changes in precipitation, and sea level rise. Cities and counties should consider taking these projected impacts into account when planning for the protection of their water bodies." (See, 2017 General Plan Guidelines p. 117, http://www.opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf.) The Conservation Element must be updated to account for sea level rise in and around Alamitos Bay, the San Gabriel River, and Los Cerritos Wetlands.

6. Open Space Element.

Although more recently updated than the Conservation Element, the General Plan's Open Space Element neglects Los Cerritos Wetlands, as well. The Element lacks the open space action plan required by state planning and case law. SEASP cannot be considered consistent with an absent open space action plan, and is thereby implicated by the General Plan's inadequate Open Space Element. State law mandates a rigorous planning effort for open space that is comparable to the planning entailed in a Housing Element. Specifically, the open space element shall include an action program consisting of specific programs to protect open space the legislative body intends to pursue...." (Gov't Code § 65564.) The Project cannot be approved without an update to the Open Space Element and correlated provisions in SEASP. As described in recommended modifications to the draft SEASP, above, in its current form SEASP is far too vague in terms of proposing an open space action plan and in describing the open space program for the SEASP Area.

7. Additional General Plan Inadequacies.

The City's 2030 General Plan is also legally inadequate because:

- The planned land uses and other essential infrastructure, including emergency access due to congestion in the SEASP and other areas, sea level rise-related infrastructure, and transit are not timely correlated; and
- The planned land uses are not correlated with timely provision of services and, in some cases, utilities.

The SEASP CEQA Findings of Fact provide numerous examples of deferred infrastructure such that there is no demonstration of correlation of proposed development (land use) and essential infrastructure and services. Whether and how individual projects pay for the road, transit, sewer and other improvements necessary to serve new growth allowed by the SEASP remains questionable. As such, no findings of correlation can be made, and the City's General Plan update and related Capital Improvements Plan must be in place prior to SEASP approval.

D. The General Plan's Inadequacies are Implicated by SEASP.

As discussed above, SEASP implicates deficiencies in several of the City's inadequate General Plan elements. SEASP further implicates:

- The failure to correlate land use, transportation, and infrastructure elements. To the extent that any Long Beach residents remain on septic system, wastewater infrastructure needs are also implicated.
- The lack of consistency between planned land uses in the 1989 Land Use Element (low-density residential) and SEASP (high-density residential and retail). (See respective Plans land use diagrams and land use designations.)
- The lack of consistency between SEASP and the Mobility Element. For example, Mobility Element Policy 1-3 is to "Improve auto-oriented streets (such as PCH) so pedestrians using the stores and services can walk comfortably and feel safer navigating the busy thoroughfare, regardless of the point of origin – from the surrounding neighborhoods or via transit." However, SEASP will introduce thousands of new trips each day and requires the imposition of mitigation measures that would expand turn lanes and widen roads in a manner that will discourage pedestrians. Wider, multi-lane roads make it more difficult (and less likely) that pedestrians will cross the street to reach their destinations. SEASP will

make pedestrians on PCH less comfortable and less likely to feel safe navigating the busy thoroughfare.

- The lack of current noise contours reflecting current conditions.
- The lack of adequate policies to address environmental justice issues, among others.

E. The General Plan Vision for Southeast Long Beach is Inconsistent with SEASP.

In what is known as vertical consistency, specific plans must be consistent with and **implement** the City's General Plan. According to the CEQA Findings, “[t]he estimated growth in households due to buildout of the Specific Plan – 5,053 households – would be within SCAG's forecasted 11,700-household increase for the entire City of Long Beach by 2040 (see Table 5.13-5 of the DEIR) and represents 43.2 percent of the forecast household growth by 2040. (CEQA Findings at page 32.) The Reduced Project Alternative represents 22 percent of the forecast household growth by 2040. It should be noted that household growth would likely be higher than disclosed in either Alternative due to density bonus and accessory units essentially allowed “by right.”

(See <http://www.hcd.ca.gov/policy-research/docs/2016-12-12-ADU-TA-Memo.docx.pdf>.) Housing growth under both Alternatives would be largely in the form of multi-residential units (including micro units) and in structures over three stories in height. This significant increase in development is in direct conflict with the governing 1989 Land Use Element, which states, “The principal land use in the SEADIP should remain low density residential.” (1989 Land Use Element, p. 169.) The General Plan continues, specifying, “Retaining this overall low density is necessary for preserving the quality of the SEADIP environment.” (*Ibid.*) SEASP cannot be approved as proposed. The land use diagrams and designations for the SEASP and other specific planning areas of the City must be updated so that these Specific Plans are consistent with the City's Land Use element and General Plan.

Finally, the City's General Plan vision for the Southeast Long Beach is heavily dependent on preservation and restoration of Los Cerritos Wetlands and in forging a connection between the wetlands and surrounding areas. The City's document envisions:

Our wetlands and local coastal habitat are thriving due to the ongoing efforts of the community and City to restore, maintain and preserve our natural resources. Combined, the wetlands, San Gabriel River, marina and access to the ocean contribute considerably to the livability and character of the area. We have protected and encouraged views to these areas and the mountains in the distance;

creating a landscape that cannot be found anywhere else.

(source: Southeast Long Beach Specific Plan 2060 City Website.) Yet, there is no mention of wetlands in the 1989 Land Use Element whatsoever. Consistency cannot be found. The Land Use Element must be amended significantly to define and discuss the wetlands and to implement strong policies for wetlands protection and restoration. The vision also discusses the maintenance and encouragement of views of waterways and mountains, but the proposed SEASP would encourage the development of taller buildings that would block, not “protect” or “encourage” these treasured views.

III. CEQA Documents Must Be Revised for Consistency.

CEQA requires the City to “use its best efforts to find out and disclose all that it reasonably can” in EIRs prepared for planning documents. (CEQA Guidelines § 15144.) In a recent decision, the California Supreme Court discussed the importance of using the most current information available in EIR analyses. Under CEQA, “[t]he determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data.” (*Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5th 497, 518.) The Court also affirmed that agencies “must ensure that CEQA analysis stays in step with evolving scientific knowledge and state regulatory schemes.” (*Id.* at 519.)

The City is currently amending its General Plan and the specific plan for southeast Long Beach (SEASP). Each amendment is accompanied by an EIR based on traffic analyses and technical reports. LCWLT is aware that the traffic analysis for the Land Use and Urban Design Element EIR is being updated. This new information must be disclosed and incorporated into the SEASP traffic analysis and EIR. Additionally, the City is considering a trip-based allocation approach to SEASP. This will already implicate the existing SEASP EIR traffic analysis and require revision, and possibly recirculation. Thus, revision of these concurrently-prepared EIRs is both reasonable and necessary.

Legal requirements aside, LCWLT urges the City to ensure that the Land Use and Urban Design Element and SEASP, and their EIRs, are consistent so that the City can achieve its vision of cohesive long-range planning. These documents are closely-related in that SEASP must be consistent with the Land Use and Urban Design Element, and LCWLT urges the City to fully exploit the opportunity to consider their revision and implementation together.

IV. SEADIP and the LCP Must Be Amended Concurrently.

The California Coastal Act requires the City to adopt a local coastal program (LCP) governing City lands located within the coastal zone. (Coastal Act § 30500.) Since 1977, SEADIP has served as the LCP for Southeast Long Beach. Pursuant to the Coastal Act, SEADIP prescribes land uses and development standards that promote and preserve coastal-dependent uses, environmentally sensitive habitat areas, and public access. SEASP will supersede these standards. The City also seeks to incorporate into its jurisdiction areas of deferred certification that have never been covered by an LCP. Thus, the adoption of SEASP will conflict with the LCP unless it is approved concurrent with LCP Amendments that are consistent with SEASP standards. Like general and specific plans, LCPs are adopted pursuant to a public process. (Coastal Act § 30503.) To ensure continued compatibility between SEASP and the LCP and to satisfy Coastal Act public participation requirements, these LCP amendments must be prepared and circulated for public review. LCWLT suggests inclusion of the proposed amendments in an appendix to SEASP.

V. The SEASP EIR Remains Inadequate.

As set forth in previously submitted letters and testimony, the SEASP EIR remains inadequate. For example, the updated traffic analysis still fails to recognize seasonal variations in traffic counts and to quantify, analyze, or mitigate additional weekend peak hour trips that will be generated by SEASP. In addition, the EIR fails to include all feasible mitigation measures capable of further reducing significant and unavoidable impacts including those related to traffic, air quality and greenhouse gas emissions. LCWLT recommends additional mitigation measures in the form of further reduced development (“interim baseline cap”) and policies related to height, wetlands buffers, public access and open space.

VI. The CEQA Findings of Fact Regarding the FEIR for the SEASP Are Inadequate.

The CEQA Findings of Fact Regarding the FEIR for the SEASP are inadequate in numerous respects. First, the defects in the EIR analysis pervade the findings of fact. For example, to the extent the traffic and fiscal analyses in the SEASP record are relied on to support findings, and these analyses are inadequate in ways cited in our prior letters, the findings are not supported by substantial evidence. Second, numerous mitigation measures defer the implementation of mitigation, some until the completion of all development under the SEASP. Examples of this include traffic, air quality, and greenhouse gas mitigation as well as mitigation for sewer and other infrastructure. To the extent that the findings rely on this mitigation, substantial evidence is not present.

Third, the Statement of Overriding Considerations is not supported by evidence and facts as required. CEQA prohibits approval of projects with significant adverse environmental impacts if there are feasible alternatives or mitigation measures that would reduce or eliminate those impacts. (Pub. Resources Code § 21002; Guidelines § 15021(a)(2).) When an agency seeks to approve a project despite its significant unmitigated impacts on the environment, the agency must adopt a statement of overriding considerations. (Pub. Resources Code § 21081.) A statement of overriding considerations must include two specific findings, supported by substantial evidence. The first finding that must be made is that “There is no feasible way to lessen or avoid the significant effect...” of the project. (Guidelines §§ 15043, 15093(b).) The second finding is that the project’s benefits outweigh its significant adverse environmental impacts. (Guidelines § 15093(a).) These findings must both be supported by substantial evidence. (Guidelines § 15093(a)-(b).) By deferring wetlands delineations to future projects, the SEASP cannot be found to enhance and protect sensitive species and the wetlands. In addition, deferral of mitigation required to build needed infrastructure and mobility improvements renders its implementation highly uncertain. Therefore, the benefits of the Project associated with these improvements cannot be the basis for Overriding Considerations. Also, for the reasons set forth in prior comments, the Fiscal Analysis is out of date and therefore no evidence is provided to support the contention SEASP is economically feasible and will produce the economics and jobs benefits described in the Findings. For these and other reasons, the Findings are inadequate and lack the factual evidence to support conclusions contained therein.

V. Conclusion.

SEASP cannot be lawfully approved until the City has adopted all of the elements of a legally adequate General Plan, including correlation of the land use and mobility elements; correlation of the land use element and other essential infrastructure and services; updated all relevant CEQA documents to achieve and factually demonstrate consistency; adopted all feasible mitigation measures to address significant impacts associated with adoption and implementation of SEASP; and prepared Coastal Act-compliant amendments to the LCP to implement SEASP. If the City Council proceeds with the approval of the SEASP, it does so at its peril for the reasons above, and should only do so with the modification to the SEASP to incorporate all feasible mitigation as described above and in Attachment 1 hereto.

LCWLT appreciates its ongoing cooperation with the City in matters related to long range planning and understands that restoring a legally adequate, consistent and correlated General Plan is a heavy undertaking. Please contact us if you have any questions or to discuss these comments.

Sincerely,



Michelle N. Black

Attachments:

1. Recommended Additional Feasible Mitigation by LCWLT
2. GP inadequacy memo www.longbeach.gov/citymanager/media-library/documents/memos-to-the-mayor-tabbed-file-list-folders/2017/june-2,-2017---update-of-the-general-plan-land-use-and-urban-design-elements/
3. Excerpts from State of California 2017 General Plan Guidelines, Governor's Office of Planning and Research, available in full at http://www.opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf.

ATTACHMENT 1
Recommended Additional Feasible Mitigation by LCWLT

Mitigation Proposal: Land Uses

The central component of LCWLT's SEASP mitigation proposal is a further reduced density alternative or "baseline cap" or "interim baseline cap"¹¹. Reducing allowable density and intensity is a feasible means of reducing numerous significant unavoidable impacts and would remain in place unless the General Plan update process supports further increases. Under an interim baseline cap, additional development density and intensity could be considered in the General Plan update subject to a policy requiring any additional development be conditioned on delivering "community benefits."

The interim baseline cap would be the capacity of total allowable net new density¹² and intensity for the SEASP area unless and until the General Plan process provides additional information, analysis, and support for more development in the SEASP area.

Interim Baseline CAP Proposal by Land Trust Comparison to EIR Alternatives					
Allowable Under Alt	Interim Baseline CAP: Land Trust proposal	Proposed Project (source: EIR)	No Project/No Development (Source: EIR)	Reduced Intensity (Source: EIR)	Adopted PD-1/Current SEADIP (Source EIR)
Commercial/Employment SF	2,191,746 (inc of 100,000 sf over existing)	2,665,052	2,091,476	2,398,547	3,106,610
Hotel Rooms	375 (no increase)	425	375	375	375
Dwelling Units	5,079 (increase of 1,000 DU over existing)	9,518	4,079	6,663	5,499

Additional Mitigation Measures (Policy Proposals)

The LCWLT supports the Planning Commission's proposed policy additions to the SEASP, including the expanded bird safe measures, wetlands-friendly plant palette and wetland

¹¹ Establishing a baseline cap reflecting the environmental and infrastructure constraints in the SEASIP area makes sense. As part of the General Plan Update underway, the baseline cap could be considered for adjustment to allow additional development subject to robust community dialogue and landowners/developers volunteering additional community benefits.

¹² In addition to redevelopment of existing uses such as hotels.

conservation and mitigation fund. In addition to establishing an “interim baseline cap” on new development for the Areas of Change, LCWLT believes the following feasible mitigation measures, in the form of modified policies, should be included by the City Council:

- **MODIFIED POLICY AND PROVISIONS:** Heights: Among the essential and feasible mitigation measures to protect the bird flyway between ocean, bay, and wetlands in the SEASP Area are lower building heights. Therefore, buildings above five-stories shall be prohibited in the SEASP area. Buildings adjacent to wetlands shall not exceed 3 stories in height (see also below). This would modify Table 5-4 Building Story Requirements and section g at page 71, among other provisions in the draft SEASP.
- **MODIFIED POLICY AND PROVISIONS:** Although we support public access, trails and public access shall be prohibited in wetlands and buffer areas. Modifies provisions at SEASP page 76, among others.
- **NEW POLICY:** A new policy and implementation measure should be added to the SEASP providing that: Prior to issuance of ANY new building permit under the SEASP, a SEASP area-wide wetlands avoidance, stakeholder engaged public access plan shall be adopted, specifying for each development property (approximately 85-acre area) and SEASP-wide, the area on each parcel to be set aside for public access; again beyond any wetlands and buffer areas.
- **MODIFIED POLICIES AND PROVISIONS:** Buffers on properties adjacent to wetlands shall be a minimum width of 100 feet, with buffers to remain natural areas. Passive recreational uses, including bird watching, walking, jogging, and bike riding shall be provided beyond the 100-foot setback along the edge of parking or structures. Should a 100-foot width be infeasible due to site specific conditions, any area less than 100-feet, shall require: (1) a finding by the City Council that the setback is not feasible; and (2) a contribution to the Wetland Conservation and Monitoring sufficient to acquire and permanently protect an equivalent number of acres lost due to a smaller buffer.
- **MODIFIED POLICY AND PROVISIONS:** Usable Open Space shall be a minimum of 20% of a site and shall be defined as publicly usable open space, not including areas inaccessible to the public, including, but not limited to: courtyards, balconies, decks, indoor gyms, and patios. Modified provisions at page 76 of the SEASP and Table 5-9, among other provisions.
- **NEW POLICY:** New development in the Areas of Change shall be required to submit a view line analysis demonstrating that building siting, heights and structural elements (e.g., elevators, rooftop equipment and architectural features) do not interfere with – and ideally enhance – views of coastal resources including the water, wetlands and natural areas and landforms. Insert at SEASP page 76-77.

City of Long Beach
September 15, 2017
Page 23