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File No. 6377.022

VIA HAND DELIVERY

Monterey County Planning Commission

RE: Moss Landing Community Plan Update Public Workshop – GPZ090005; Moss Landing Business Park

Dear Commissioners:

Thank you for your continued work on the draft Moss Landing Community Plan (“MLCP”) and the opportunity to comment on the proposed plan, on behalf of our client Moss Landing Commercial/Business Park (“MLBP”). I write today to clarify MLBP’s position on certain language presented in Staff’s Report and updated draft policies.

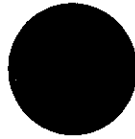
2019 Policy No. NCLUP-ML-NEW1 Staff Recommendation

In Exhibit A, Staff proposes an entirely new, never before presented to the public, draft policy of the 2019 Policy No. NCLUP-ML-NEW1 Staff Recommendation. The draft policy proposes to severely restrict any use of the MLBP property. The draft provides:

2019 Policy No. NCLUP-ML-NEW1 Staff Recommendation

Development within the Moss Landing Business Park Special Treatment Area (Figure ML-6) shall be subject to the following:

- 1. Uses are limited to coastal-dependent uses, coastal-related industrial uses, and the following coastal priority uses: Natural Resource Preservation and Protection, and Agricultural Uses (including research, commercial cannabis activity and aquaculture).***
- 2. Residential (other than caretakers’ units) and Commercial development is not allowed.***
- 3. Direct Motor Vehicular access to the portion located west of Highway 1 is not allowed from Highway 1 or Moss Landing Road.***
- 4. Approval of a comprehensive General Development Plan that analyzes the following:***
 - a. Proposed circulation improvements and their location;***
 - b. Categories of proposed land uses and their location;***
 - c. An approximation of the proposed potential development intensity for each proposed use;***
 - d. The coastal dependent/related/priority nature of proposed uses (including the use of seawater); and***
 - e. Potential land use conflicts between different categories of use, and the protection of unique natural resources on and around the site.***
- 5. Development of industrial operations that can reuse waste heat or other effluent streams from industrial facilities within the Moss Landing Community, or that utilize coastal resources, as part of their processes is encouraged.***



For the reasons indicated below, MLBP objects to the draft 2019 Policy No. NCLUP-ML-NEW1 Staff Recommendation.

For more than a decade there has been broad-based support and agreement that MLBP would be designated as a Special treatment Area in conjunction with the MLCP update. Consensus on a special treatment area designation primarily arose from several important concepts. First, there is significant public support for transitioning this property from more environmentally intensive uses, such as the Kaiser Heavy Industrial Operations, to less environmentally intensive uses that would accompany a typical, business park including light industrial and commercial uses rather than primarily heavy industrial uses. Second, there is public and governmental support for allowing this parcel to create new jobs and business growth and revenue in the moss landing region. Third, the public and local government authorities recognize that this is an extremely large property, which requires greater flexibility in available uses in order for the property to be economically productive. Additionally, imposing multi-layer restrictions on the types of uses allowed on the property greatly impedes the repurposing and economic and job growth. Fourth, it is simply not appropriate to apply the term coastal-dependent uses to this property in any way. Coastal dependent uses are restricted to only those uses that require being "on or adjacent to the sea". This property is not on or adjacent to the sea, except one parcel on the West side of highway 1. As such, none of the other 200+ acres could ever have a coastal dependent use, as a matter of law. So, that phrase should not be applied to those portions of the property.

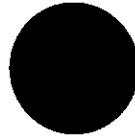
Additionally, the staff recommended language uses the phrase "coastal-related industrial uses" as one of only two viable economic uses. The other being Agricultural uses. This is highly over-restrictive. It not only restricts use of the property to coastal related uses, but it further insists that such uses be solely industrial in nature. It is simply unrealistic to believe that a property of this size could achieve even 10-15% use capacity if restricted in this manner.

Most importantly, these restrictive definitions and limitations on uses completely undermine and eliminate the agreement to use a Special Treatment Designation to expand, rather than contract, the types of available uses on the Property.

After more than a decade of agreement that the available uses would be expanded, and a special treatment designation applied to effectuate the common goals above, it is inexplicable that Staff has now, with the stroke of a pen, eliminated that entire concept and understanding that has been in place since the committee evaluated this issue in 2007.

MLBP has been given no explanation for this 180 degree shift in position. Nor does MLBP believe that these restrictions are consistent with public or governmental goals. The above restrictions certainly do not comport with the position that county officials have discussed and advocated to MLBP for more than a decade.

MLBP strongly urges you to not accept these draconian limitations on use of this large property, and instead asks that the Planning Commission instruct staff to return to the concept of Special Treatment Designation, with appropriate uses and limitations being addressed in that individualized and focused evaluation, rather than micro planning as to a single parcel as part of the MLCP.



To do otherwise is to single out one property owner for unprecedented restrictions, and to border on imposing a regulatory taking.

The following provides examples from the North County Land Use Plan ("NCLUP") and related documents evidencing that the use of the MLBP land should not be and is not restricted to Coastal Dependent or Coastal Related, but that such use is encouraged:

1. Appendix B to the NCLUP, Sections 10 and 12, Glossary of Terms, define "Coastal-Dependent Development or Use" and "Coastal-Related Development":

10. Coastal-Dependent Development or Use: Any development or use which requires a site on or adjacent to the sea to be able to function at all. (Coastal Act)

....

12. Coastal-Related Development: Any use that is dependent on a coastal dependent development or use. (Coastal Act)

As indicated prior, MLBP is not located on or adjacent to the sea. In fact, Staff points out this fact in the fifth paragraph on Page 20 of Exhibit A stating that "[t]he portion of the site east of Highway 1 does not have access to the harbor or the sea, which significantly affects the ability to utilize the developed area for coastal-dependent and coastal-related uses," and Staff goes on to point out how restriction of the MLBP site to Coastal Dependent uses doesn't make sense and prevents use of the MLBP site, with "...without access to the water for the majority of the Business park, the definition of Coastal Dependent makes use of the site unlikely".

2. Section 2.C.a of the 2009 Committee Recommendation provides in pertinent part that:

"The committee finds that the business park should allow Coastal Dependent and Coastal Related Industrial Uses to be in keeping with the Coastal Act. However, the site needs a designation that provides for the range of uses normally found in a business park."
(Emphasis Added.)

The 2009 Committee Recommendation is to *allow* coastal dependent and coastal related industrial uses, and to provide for typical business park uses. No reference is made in the draft policy for language indicating the range of uses normally found in a business park. Also, the designation in the draft policy of allowing the coastal priority use of "Natural Resource Preservation and Protection" is definitely NOT a use normally found in a business park. Further "Natural Resource Preservation and Protection" is not a NCLUP Land Use Category, which would leave enforcement of its parameters up to interpretation and its uses uncertain. "Resource Conservation" appears to be the closest NCLUP Land Use Category, and that Category generally allows no development. Designation of the MLBP as a Special Treatment area allowing uses normally found in a business park, consistent with the 2009 Committee Recommendation, would provide an alternative to the current Heavy Industry use that could be less intensive and less environmentally impactful.

3. Section 4.3.6.F.1 of the NCLUP provides in pertinent part that “Lands designated for Heavy and Light industrial use in the North County Coastal Zone, shall be reserved for coastal dependent industry...” Such section specifically states lands designated for “Heavy...industrial use...” The Board of Supervisors Resolution No. 18-071, attached to the Staff Report as Exhibit L (amending Section 4.3.6.F.1) incorrectly emphasized the land designation to “coastal dependent.” The lands are *designated as heavy industrial*, not *designated* as coastal dependent. Section 4.3.6.F.1 properly indicates that heavy industrial and light industrial lands in the North County Coastal Zone be *reserved – NOT restricted –* for coastal dependent industry. The only exception would occur, as provided in Section 5.5.2.10 of the NCLUP, for NEW heavy industry.
4. Evidence of the non-restricting nature of the use of “coastal dependent” is found on page 96-97 of the NCLUP in Sections 5.5.1 and 5.5.2 which show “encouragement” for such use, and in the glossary definition of coastal dependent which requires specific location for coastal dependent use:

5.5.1 Key Policy

Existing coastal dependent industries in Moss Landing have local, regional, statewide and, in some cases, national significance. Accordingly, the county shall encourage maximum use and efficiency of these facilities, and to allow for their reasonable long-term growth consistent with maintaining the environmental quality and character of the Moss Landing Community and its natural resources. (Emphasis added.)

5.5.2 General Policies

1. *Coastal dependent industrial facilities should be encouraged to expand within existing sites before off-site expansion is considered. Commercial fishing activities and aquaculture shall have priority over other types of coastal dependent industrial uses in Industrial areas. The Kaiser industrial facility at Moss Landing should be permitted to expand within the existing site subject to conforming to all other requirements of this plan, and other State and Federal regulations. (Emphasis added.)*

Finally, allowance of the uses indicated in Section 2 of the new draft policy are determined pursuant to the permitting process, and the restrictions and requirements set forth in Sections 3 and 4 of the new draft policy are determined pursuant to a general development plan and the permitting process. This is consistent with NCLUP Section 5.5.2.2 which provides for “master plans” for future expansion, improvement or other development for the MLBP land. It is also consistent with Staff Recommendation for draft 2019 Policy No NCLUP – ML - 2.5 requiring the approval of a General



Development Plan prior to considering future expansion, improvement, or other development of industrial facilities within the MLCP.

In summary, the new draft policy would severely and unreasonably restrict the use of the property, would restrict use to coastal-dependent and coastal-related in an area that does not meet the requirement of being on or adjacent to the sea, and would render the property unable to be developed or developed only pursuant to extreme limitations that are not applied to other property owners. To reiterate, MLBP strongly urges refusal of the draconian limitations in the draft policy on the use of this large property, and instead asks that the Planning Commission instruct Staff to return to the concept of Special Treatment Designation, with appropriate uses and limitations being addressed, instead of micro planning as to a single parcel as part of the MLCP. To do otherwise is to single out one property owner for unprecedented restrictions, and border on imposing a regulatory taking.

2019 Policy No. NCLUP-ML-2.10 Staff Recommendation

MLBP reiterates its prior assertion that any square footage limitation on the MLBP property shall apply only to development or structures that are occupied or habitable. While it is appreciated that Staff agrees that the seawater tanks should be excluded from the square foot limitation, Staff's reasoning behind doing so includes factors typically required and reviewed in a general development plan. Such factors include: typical use not being likely to generate significant traffic, the little or non-use of potable water, the little to no generation of wastewater to the sewer system. Providing that the restriction of square footage limitation applies only to development or structures which are occupiable or habitable would provide further clarity and guidance in the development plan and permitting process review.

MLBP reserves the right to respond on matters provided in communications on the Moss Landing Community Plan Update matter. Thank you for the opportunity to comment.

Yours truly,

MONCRIEF & HART, PC

Koren R. McWilliams
Attorneys for MLBP

KRM/sld