



**National Trust for
Historic Preservation**
Save the past. Enrich the future.

April 8, 2013

Christopher Cannon, Director
City of Los Angeles Harbor Department
Environmental Management Division
425 S. Palos Verdes Street
San Pedro, CA 90731

VIA EMAIL to: ceqacomment@portla.org

**Re: Comments on the Master Plan Update for the Port of
Los Angeles and Draft Program Environmental
Impact Report**

Dear Mr. Cannon:

On behalf of the National Trust for Historic Preservation, thank you for the opportunity to provide comments on the Port of Los Angeles's Draft Program Environmental Impact Report (Draft PEIR) for the Port Master Plan Update. The guidelines and policies established in the Plan Update will have a major role in shaping the future of the cultural and historic resources under the jurisdiction of the City of Los Angeles Harbor Department. Under the Public Trust Doctrine, the Department stewards these areas for the benefit of the public and future generations.

Summary

As we stated in our comments on the Notice of Preparation, our particular interest is to ensure the revitalization of the historic resources in proposed planning areas 3 and 4 – particularly those concentrated near Fish Harbor. These places are invaluable assets and tangible links to the Port's history, yet many remain underused, vacant, and in need of environmental remediation. Among them are three large canneries and a steam plant that were responsible for the development of the tuna canning industry in America, a highly significant World War II shipyard, and the few remains of a once-sizeable Japanese American fishing village forcibly evacuated in the panic that followed the Pearl Harbor attack.

We are pleased that the Port has made a commitment to the preservation of historic resources in Goal 5 of the Draft Master Plan Update. In addition, the Draft PEIR proposes at least some basic mitigation measures to ensure that

historic architecture and archaeological sites are protected as future projects move forward.

However, the Draft Plan Update also suffers from oversights and a lack of will to preserve historic and culturally significant sites, which will prohibit the fulfillment of Goal 5. In fact, increased restrictions on uses for historic buildings and ill-conceived planning district boundaries are a step backwards for the Port from the existing Master Plan. Further, many of our comments elaborate on the same issues we pointed out in our letter on the Notice of Preparation dated August 24, 2012.

Interests of the National Trust

The National Trust for Historic Preservation was chartered by Congress in 1949 as a private nonprofit membership organization for the purpose of furthering the historic preservation policies of the United States and facilitating public participation in the preservation of our nation's heritage. 16 U.S.C. § 468. The National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government.

On June 6, 2012 the National Trust for Historic Preservation listed the historic resources at Terminal Island at the Port of Los Angeles among America's 11 Most Endangered Places. Our cause for concern was twofold. First, many historic resources on Terminal Island have long sat vacant and neglected and the Port has not prioritized their re-use. Without active long-term uses, the buildings are likely to further fall into disrepair, making their eventual re-use more challenging. Second, preliminary plans for Terminal Island suggested that future roadway alignments would result in a radical reconfiguration of the area's street grid which would likely cause the demolition of historic resources. Much of this plan was incorporated into the Draft Master Plan Update.

Concurrent with the 11-Most listing the National Trust designated Terminal Island a National Treasure, based on both the area's national significance, and recognition that the involvement of the National Trust would have positive implications for preservation nationwide. Through our focused advocacy we aim to work closely with the Port to create a master plan for Terminal Island that can serve as a model for similarly-situated ports across the country. We believe that this threshold will be met if the Master Plan Update promotes a realistic strategy for the adaptive re-use of historic structures a method for achieving the Port's broader economic success.

The Public Trust Doctrine Establishes the Basis for the Port's Responsibility to Preserve Historic Maritime Commerce Facilities at Terminal Island

Because most of Terminal Island consists of former tidelands, the Port of Los Angeles has the responsibility to manage the land and its assets consistent with the Public Trust Doctrine. Its general duties under this rule are not discussed in the Draft Plan Update, but have important consequences for historic preservation. The Public Trust Doctrine stems from the common law presumption that the land below the natural high tide line is incapable of private ownership. Each manager of public trust lands, such as the Port of Los Angeles, must steward the land for the benefit of the public, a principle rooted in Roman Civil Law and English Common Law.¹

Fundamental to serving the public interest is the proper stewardship of assets that embody and reflect the Port's unique maritime-related history. While those uses were traditionally focused on promoting navigation, commerce, and fisheries, courts have recognized the need for new uses consistent with the desires of the public. In a landmark case in 1971, the California Supreme Court confirmed that "[t]he public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the state is not burdened with an outmoded classification favoring one mode of utilization over another."² As a result, in order to promote historic uses related to maritime activities, the Port need not limit its allowable future activities in the area. For instance, educational initiatives which promote public appreciation for the area's history should be considered if they are necessary to revitalize the Port's neglected historic structures.

The Draft PMPU and Draft PEIR Contain an Incomplete List of Identified Historic Resources

CEQA requires that a lead agency consider a property historically significant if a "fair argument" can be made for its inclusion in the local or statewide Register of Historic Resources. *Architectural Heritage Association v. County of Monterey* (2005) 122 Cal.App.4th 1095. CEQA does not require that the resource be listed in any formal inventory, but by a fact-based opinion of an historic resources expert or advisory commission.

The Draft PEIR contains a discussion of historic resources and indicates that most are located within the Fish Harbor planning district area. Table 3.4-2

¹ National Audubon Society v. Superior Court (1983) 33 Cal. 3d 419, 433-34/

² Marks v. Whitney (1971) 6 Cal.3d 251, 259.

purports to contain an exhaustive list of recorded and potentially eligible resources. However, we note two critical omissions:

Canner's Steam Plant

This plant was built in 1951 in the years following World War II as the seafood canning industry boomed. Five canneries formed a cooperative to provide steam for cooking and canning. The centralized steam generation enhanced the canning process and increased efficiency in the industry. It is a critical link to the area's once-mighty canning industry.

Historic Japanese Commercial Village

We were surprised to see that the Draft PEIR omits mention of the historic Japanese fishing village at Terminal Island. The forcible internment of the approximately 3,000 American citizens living at Terminal Island was a dark chapter in the Port's history, but nonetheless worthy of recognition. The Port has commendably created a memorial honoring the contributions of the Japanese Americans who were evicted, but should place greater effort on acknowledging and protecting the physical remnants of the former village. Two commercial storefronts, for instance, remain intact, albeit altered, and it is unclear why the Port does not place any value on them as historic assets. In addition, we presume there is a strong likelihood that any development in the area will encounter archaeological resources. The Master Plan Update must acknowledge the value of archaeological sites that post date the Native American settlement on its property as they may contribute information to our understanding about the Port's 19th Century history.

Recommendation

We recommend that the Port include a map and more comprehensive list of known cultural resources. The inclusion will improve the planning process as project specific CEQA review occurs in the future.

The Proposed Boundaries of Planning Area 3 in the Draft PMPU Do Not Respect Historic Resources and the Draft EIR Fails to Account for the Effects on Historic Resources

The following image appears on page 36 of the Port Master Plan as a cropped version of Figure 7:



The blue color indicates that the area will be zoned as a “container” land use area which is defined at Table 8 on page 22 as “Water-dependent uses focused on container cargo handling and movement.” This designation is virtually a death knell for any extant structure, and/or extant archaeology as container storage areas require expansive, flat, and paved terrain.

This new planning area differs from existing Planning Area 8 which includes within the Fish Harbor area all historic resources southeast of Terminal Way. The departure is a major matter of concern for the historic environment at Terminal Island, as it divides the historic Japanese Commercial Village by placing the district boundary at Cannery Street. The area northwest of Cannery Street is designated for containers areas, while the area southeast towards Fish Harbor, is for commercial fishing (as detailed in Figure 8). The effect of developing the area for containers would cause a major loss of integrity for this resource. Furthermore, Canner’s Steam Plant is also located within the container zone, we believe inappropriately. The Draft PEIR omits mention of both of these impacts.

Recommendation: Revise the boundaries of Planning Area 3 to include all the land southeast of Terminal Way within Planning Area 4. This will result in greater protection for the historic resources currently included in the Planning Area 3 boundary including the historic Japanese American Commercial Village as well as Canner’s Steam Plant.

The Proposed Boundaries of Planning Area 4 in the Draft PMPU Do Not Respect Historic Resources and the Draft EIR Fails to Account for the Effects on Historic Resources

The following image appears on page 39 of the Port Master Plan as a cropped version of Figure 8:



As the Draft PEIR indicates, this area contains, by far, the greatest concentration of significant historic architectural resources within all five planning areas. Between Cannery and Wharf Street remnants of the Japanese American Commercial village still exist. Between Barracuda Street and Ways Street on the Western waterfront are three historic canneries: Chicken of the Sea, Pan-Pacific Fisheries, and StarKist Tuna Cannery Main Plant. Finally, to the east of Fish Harbor lies Southwest Marine complex, the Terminal Island Japanese Memorial, and the Al Larson Boat Shop Complex.

The proposed zoning that applies to each of these resources varies considerably from current permissible uses. The existing Master Plan permits commercial fishing, recreation, industrial, liquid bulk, institutional and “other” uses in the Fish Harbor Area (Planning Area 8). The Southwest Marine area in Planning Area 7 permits institutional uses in addition to the aforementioned uses.

Neither the Draft Master Plan Update nor the Draft EIR explains why the new constraints are necessary. The canneries and Japanese Village are designated *only* for “Commercial Fishing.” Southwest Marine is designated *only* as “Breakbulk.” The Al Larson Boat Complex and the Memorial are indicated to be “Marine Support.”

Notably, neither the Port Plan nor the Draft PEIR contain any indication of the consequences these zoning designations will have for historic resources. If a specific future tenant of these buildings was anticipated, the designation might be justified. However, the canneries and shipbuilding facilities remain vacant, underused, and in disrepair, and such strict, prescriptive zoning for these areas does not bring with it a promise of re-use.

Further, we feel that additional credit should be given to repair and retain the historic resources in the Fish Harbor area of Terminal Island because of their value to the public and for representing to future generations the unique stories of the Port's history. We note that policy goals, such as environmental conservation, are reflected in other planning areas, such as the open space designated along the southern tip of Pier 400 as a protected area for least terns. Similarly, expanding permissible uses in places like Fish Harbor, that are densely concentrated with historic and cultural resources, is a major public policy benefit that the Port should support.

The Port already has proposed a precedent for expanding potential uses. The northern edge of Terminal Island in Planning Area 3, for instance, is cross-hatched, envisioning that Dry Bulk, Breakbulk, and Container uses could all be located in the same area.

Recommendation

Expand the boundaries of Planning Area 3 to include all historic resources in the Fish Harbor area including Canner's Steam Plant and the historic Japanese Commercial Village. Permit more flexible uses of historic buildings within the district by "cross-hatching" the revised "industrial history" zone with additional uses, such as has been the case under the existing Master Plan. Provide added financial incentives for tenants seeking to rehab historic buildings as a method of ensuring the long-term survival of historic resources.

CEQA Considerations

To the extent the Draft PEIR limits unduly limits allowable uses for historic resources to the point where there is no economically viable means of rehabilitating them for that use, it may cause a significant impact on the environment. Pub Res. Code § 24084.1; Guideline § 15064.5 As a result, the Port must determine if there are "feasible alternatives or feasible mitigation measures available that would substantially lessen [those] environmental effects." Pub Res. Code § 21002.

There is no analysis in the Draft PEIR regarding the effects of zoning the historic resources around Fish Harbor in such a narrowly prescriptive way. The single most alarming designation is the proposed breakbulk category specifically overlaid over some, but not all of the Southwest Marine site. Such designation implies that the Port may be considering a particular project for that area, and is not disclosing to the public what the effects will be on historic resources. CEQA requires much more. Project descriptions must include reasonably foreseeable future activities that may become part of the project. *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.

Absent a specific project proposal, we see no reason to declare that the Southwest Marine site shall be only used for breakbulk, particularly when those resources have been used for a variety of uses in the past and could potentially support creative re-used proposals that are sufficiently related to water-dependent uses to survive scrutiny by the Coastal Commission.

The Coastal Act Does Not Prohibit More Expansive Port Related Uses in the Fish Harbor Area

While the California Coastal Act of 1976 imposes unique responsibilities on the management of property within the coastal zone, we do not believe it is appropriate to cite the Act as a basis to prescribe such a narrow range of uses for historic buildings at the Port.

There are no provisions within the Coastal Act that diminishes a lead agency's responsibilities to the historic buildings under its jurisdiction under CEQA. Passed by the California legislature six years prior to the Coastal Act, CEQA contains a specific, substantive mandate that requires agencies to implement feasible mitigation measures for projects that may otherwise cause significant adverse effects. The "environment" is defined in CEQA to be inclusive of the State's "objects of historic or aesthetic significance." PRC § 21060.5. Nothing within the Coastal Act in any way lessens the Port's responsibilities to steward its historic resources differently than other value protected by CEQA.

On page 3-8-4 of the Draft PEIR, the Port cites four provisions of the Coastal Act as its basis for limiting uses in the way it proposes in the Master Plan Update: Public Resource Code sections 30001.5(d), 30255, 30260 (which is incorrectly cited as "31260"), and 20708(c). While these sections establish that "coastal-related" developments are priorities of the Coastal Commission, preservation of historic industrial Port facilities is entirely consistent with that goal. For instance, the Coastal Act contains a clear reference to CEQA in Sections 20260 by permitting deviations if a proposed project would violate CEQA's mandate by specifically referencing CEQA's language:

where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

In addition, Section 30708 mandates that port-related developments shall be located, designed, and constructed as to "minimize substantial adverse

environmental impacts” in addition to the Port’s referenced citation to giving highest priority to the use of properties for “port purposes.” The language of these sections clearly imply that the Coastal Act protects the same environmental qualities as CEQA, including historic resources, and is not meant to contradict the lead agency’s responsibilities to protect those sites.

Recommendation

The Coastal Act’s requirements can be fulfilled while meeting the mandates of CEQA by prioritizing port-related uses in the historic buildings at the Port in through much broader means. Most importantly, the Port should recognize that while the Coastal Act emphasizes preferable uses, it does not mandate them, particularly when such preferable uses would cause impacts to the environment protected by CEQA. As such, we strongly encourage more expansive land use designations recognizing that the Coastal Act does not alter the substantive requirements of CEQA to protect the State’s historic resources.

Conclusion

The proposed PMPU has the potential to set an important benchmark for similarly-situated ports across the country. In order for historic preservation to be a realistic and meaningful goal, the rehabilitation of historic infrastructure must be facilitated through specific commitments by the Port. This includes drawing respectful boundaries of planning districts and permitting greater flexibility in use designations.

Thank you for the opportunity to comment on this important document. As the Port of Los Angeles moves forward at this critical stage, we look forward to helping ensure that the preservation and use of historic resources remains a major priority. Please don’t hesitate to contact me at (415) 947-0692 or bturner@savingplaces.org if you have any questions.

Sincerely,



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National Trust for Historic Preservation

Cc: Linda Dishman, Los Angeles Conservancy