

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



W 25b

Addendum

March 4, 2010

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item 25b**, City of Carlsbad Major LUP Amendment **2-08B (Adams St. Subdivision)**, for the Commission Meeting of March 10-12, 2010

Staff recommends the following changes be made to the above-referenced staff report:

1. Modify the third full paragraph on Page 18 as follows:

Moreover, additional *specific* concerns remain regarding consistency of the project's design with Section 30240. These concerns include that the development footprint approved by the City uses the maximum development area possible while did not include any biological buffers, or provide providing adequate safety for the proposed structures in the form of brush management. Again, the City is proposing to allow development of 45% of the lot. As such, approval of the LCP amendment would establish a future development envelope that encroaches into ESHA and doesn't include brush management, and thus, impacts to ESHA could take place in an area greater than that which can be found consistent with Section 30240 of the Coastal Act even if the development could be considered a resource dependent. Therefore, the proposed amendment must be denied.

2. Modify the first full paragraph on Page 19 as follows:

It is important to note that the City required and received comments from the Carlsbad Fire Marshal supporting the design improvements in lieu of the City's traditional 60' fire suppression zone customarily as required by the City. However, the previously stated factors lead to concerns regarding future potential impacts to ESHA associated with brush clearance. First, *brush management activities are currently being undertaken onsite* for the adjacent home to the east within the portion of the lot containing non-native grasses. Specifically, the biological report associated with the development describes the Non-native grassland area as:

3. Modify the first full paragraph of Page 23 as follows:

The HMP further limits highly constrained sites (defined by having over 80% or more of the lot contain ESHA) to development on no more than 25% of the lot. In this case, the lot is highly constrained, contains steep slopes, sensitive coastal sage scrub vegetation, wetland habitat and gnatcatchers, and is adjacent to both Hardline (Agua Hedionda Lagoon) and standards areas (Lots west of subject site). However, the definition for highly constrained sites included in the HMP, is limited to sites containing ESHA on 80% or more of the property. 78.7% of the subject site is currently vegetated by ESHA (ref. Table #1). Further, the biological report includes the area of disturbed habitat is currently being maintained as a fire suppression zone for the neighboring residence to the east. As such, it is unclear what portion of the subject site would be ESHA if the vegetation weren't being actively removed for brush management. Thus, it is unclear at this time, if the site were left unaltered, if it would be revegetated with the 10.3% (0.014 ~~0.003~~ acres) necessary to require the development to be limited to 25% of the site. Given this ambiguity, the more conservative approach, defining the site as a highly constrained site, might have been the more appropriate City certified standard of review.

4. Modify the second full paragraph on Page 25 as follows:

The City of Carlsbad is the lead agency for purposes of CEQA analysis for this project. Because the City certified a Mitigated Negative Declaration for this project, no alternatives were required as part of its analysis. The proposed development, however, cannot be found consistent with the Coastal Act and as such, the applicants should consider alternative developments that would create a development envelope that would redesignate a greater portion of the site as Open Space and could therefore provide better protection to the sensitive resources and have fewer adverse environmental impacts overall. As previously suggested, a single home alternative would not require the approval of a sub-standard sized lot, would not preclude standard development, and could potentially significantly decrease impacts to ESHA. This alternative therefore appears to have fewer environmental impacts than the proposed project. The City has expressed some concerns that this alternative is not likely, as, based on its General Plan; the lot could be developed with up to 3 units. Any development on-site, however, must also be consistent with the Coastal Act, and given that the proposed two home alternative is inconsistent with the Coastal Act, it seems unlikely that a three home alternative would be consistent with the Coastal Act. Thus, this alternative might be found to be environmentally superior to the proposed project.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



February 24, 2010

W25b

TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
TONI ROSS COASTAL PROGRAM ANALYST, SAN DIEGO COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR LUP
AMENDMENT 2-08B (Adams St. Subdivision) for Commission Meeting of March
10-12, 2010**

SYNOPSIS

The subject LCP amendment was submitted and filed as complete on December 19, 2008. A one-year time extension was granted on March 11, 2009. The last date for Commission action on this item is March 18, 2010. The submittal by the City was identified as an amendment modifying both the Land Use and Implementation Plans; however, there is no Implementation Plan certified for the area, thus the Commission is reviewing only the proposed modification to the City's certified Land Use Plan.

This staff report addresses one of two of the components submitted by the City for Local Coastal Program Amendment (LCPA) 2-08. LCPA 2-08A (Drainage Master Plan Update) is also scheduled for the March, 2010 Commission hearing.

SUMMARY OF AMENDMENT REQUEST

The amendment involves modifying the land use designation from Residential Low Medium (RLM) to Open Space on a portion (0.60 acres) of a 1.08 acre site containing steep slopes and sensitive habitat, some of which is occupied by California gnatcatchers, to facilitate the development of two (2) single family homes. While the only revision before the Commission is the change of residentially designated lands into open space, the redesignation establishes a development envelope that, if constructed, would include substantial impacts to ESHA and would not provide adequate protection to the sensitive resources onsite. The proposed development, including its impacts, is therefore intrinsically connected to the land use change, as the land use redesignation would facilitate excessive development inconsistent with the Coastal Act. Thus, the redesignation and proposed project must be reviewed comprehensively.

The project in its entirety includes the subdivision of a 1.08-acre into four lots, and the construction of two (2) single family residences. Lot 1 is approximately 0.16 acres

(7,081 sq. ft.) in size and will be developed with a two-story, 3,000-sq. ft. custom home. Lot 2 is approximately 0.22 acres (9,756 sq. ft.) in size and will also be developed with a two-story, 3,243-sq. ft. custom home. Lot 3 is approximately 0.60 acres (26,007 sq. ft.) and will remain as dedicated open space. Lot 4 is approximately 0.10 acres (4,415 sq. ft.) in size and will be developed as a common area consisting of a driveway and parking area to serve the two proposed residences. The open space parcel conserving the remaining sensitive habitat is being redesignated as “Open Space.” As part of the companion discretionary review, a Deed Restriction and a Conservation Easement are required as conditions of approval of the underlying project. However, an 8 foot wide public bicycle/pedestrian trail will be constructed within this Open Space area. The project is located on the south side of Adams Street along the north shore of Agua Hedionda Lagoon between Highland Drive and Park Drive (ref. Exhibit #1).

The site slopes downward from north to south with approximately 78 feet of elevation change between the highest point of the site at Adams St. and the lowest point of the site at the lagoon edge. Slopes range from 5-40% with the steepest portions of the site located nearest to the lagoon. The site is currently undeveloped and contains 0.84 acres of occupied Coastal Sage Scrub (CSS), 0.01 acres of Wetland (Open Water/Rocky Beach), 0.28 acres of Non-Native Grassland, and 0.02 acres of disturbed habitat, for a total of 1.15 acres. The 1.15-acre total includes the 1.08 acres of the subject site and .07 acres of City ROW and improvements associated with Adams Street, and is comprised of non-native grassland, and disturbed habitat. Surrounding land uses include Adams Street and single-family development to the north, the Agua Hedionda Lagoon to the south, an existing two-story single-family home to the east, and vacant residentially designated land to the west.

The construction of the homes, driveway, and public accessway will result in impacts to 0.27 acres of Coastal Sage Scrub, which the project applicants have proposed to mitigate at a 2:1 ratio (0.54 acres) by providing 0.54 acres of offsite Coastal Sage Scrub creation or acquisition/preservation within the Coastal Zone. The project includes a 100' buffer from wetland habitat and a 20' buffer from upland habitat. The project includes various structural improvements in lieu of providing the standard 60 foot fire suppression/brush management area between the developed and open space areas.

STAFF NOTES

While Agua Hedionda is one of six segments of the City of Carlsbad's LCP, an implementation program for the Agua Hedionda segment has not been certified as yet. Chapter 3 of the Coastal Act will be the standard of review for not only the subject LUP amendment but it will also be the standard for the companion coastal development permit application.

It is important to note that the City also submitted a rezoning action on the subject site associated with this Local Coastal Program Amendment (LCPA). However, the subject site is located in an area that remains “deferred certification”. The City has submitted

and certified the Land Use Plan (LUP) for the Agua Hedionda Segment; however, no such Implementation Plan has been received by the Commission to date. Thus, while the City submitted changes to the zoning on this site, it is not subject to Commission review. That being said, due to the location, habitat presence, and slope of the parcel, the City's Agua Hedionda Land Use Plan, Habitat Management Plan, and Coastal Resource Protection Overlay Zone all contain policies that relate to this site. Further, because the parcel contains and is located adjacent to flammable vegetation, various policies regarding brush management also apply to this site, for the purposes of the City's review. Therefore, staff has included other relevant land use and zoning policies for illustrative purposes regarding the site's constraints and to demonstrate how the City is currently implementing its certified land use policies.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending denial of the Land Use Plan (LUP) as submitted. Again, while the only revision before the Commission is the change of residentially designated lands into open space, the redesignation establishes a development envelope that, if constructed, would include substantial impacts to ESHA and would not provide adequate protection to the sensitive resources onsite. The proposed development, including its impacts, is therefore intrinsically connected to the land use change, as the land use redesignation would facilitate excessive development inconsistent with the Coastal Act. The land use plan amendment will facilitate the subdivision of a 1.08 acre lot into four (4) parcels. Three of the parcels will be utilized for development (two (2) single family homes, and one (1) private driveway), and the remaining parcel will be redesignated as Open Space. The associated development raises many inconsistencies with the Coastal Act including development on sub-standard lots, the lack of adequate fire suppression area, unsupportable impacts to ESHA and steep slopes, unmitigated impacts to federally protected California gnatcatcher habitat, and development within a required wetland buffer. Given the constraints on this site, a subdivision and the construction of two (2) single family residences cannot be found consistent with the Coastal Act. Alternatively, while the legal lot could support one residence, the primary issue is the excessive development footprint; a far greater portion of the site should be preserved as open space.

The appropriate resolutions and motions begin on Page 5. The findings for denial of the Land Use Plan Amendment as submitted begin on Page 5.

ADDITIONAL INFORMATION

Further information on the City of Carlsbad LCP Amendment 2-08B may be obtained from Toni Ross, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

The City of Carlsbad's certified LCP contains six geographic segments, as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties, and Village Redevelopment. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The West Batiquitos Lagoon/ Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment is a deferred certification area until an implementation plan for that segment is certified. While there have been previously certified LCP amendments that have addressed all segments of the City's LCP, (ref. LCPA 1-03B/Habitat Management Plan; 3-04B/ NPDES) this is the first amendment that would modify lands only within the Agua Hedionda Segment.

B. STANDARD OF REVIEW

The standard of review for land use plans, or their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it finds that it meets the requirements of and conforms with Chapter 3 of the Coastal Act. Specifically, it states:

Section 30512

(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.

C. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTION

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.

- I. MOTION I:** *I move that the Commission certify the Land Use Plan Amendment for the City of Carlsbad LCP Amendment No. 2-08B as submitted.*

STAFF RECOMMENDATION OF DENIAL OF CERTIFICATION:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in denial of the land use plan 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 CERTIFICATION OF LAND USE PLAN AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of the Land Use Plan Amendment for the City of Carlsbad as submitted and finds for the reasons discussed below that the submitted Land Use Plan Amendment fails to meet the requirements of and does not conform to the policies of Chapter 3 of the California Coastal Act. Certification of the plan would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures that would substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

PART III. FINDINGS FOR DENIAL OF CERTIFICATION OF THE CITY OF CARLSBAD LAND USE PLAN AMENDMENT

A. AMENDMENT DESCRIPTION

The amendment involves modifying the land use designation from Residential Low Medium (RLM) to Open Space on a portion (0.60 acres) of a 1.08 acre site containing sensitive habitat in order to facilitate the development of two (2) single family homes. While the only revision before the Commission is the change of residentially designated lands into open space, the redesignation establishes a development envelope that, if constructed, would include substantial impacts to ESHA and would not provide adequate protection to the sensitive resources onsite. The proposed development, including its impacts, is therefore intrinsically connected to the land use change, as the land use redesignation would facilitate excessive development inconsistent with the Coastal Act.

The project in its entirety includes the subdivision of a 1.08-acre into four lots, and the construction of two (2) single family residences.

As proposed, the project will facilitate the protection of 55% (0.60 acres) of the lot, and will utilize the remaining 45% of land for development. As such, the line drawn separating “developable area” from “open space” is the main component being reviewed by the subject LCP amendment.

B. CONFORMANCE WITH CHAPTER THREE POLICIES.

As previously discussed, the legal standard of review for the proposed LCP amendment is exclusively the Chapter 3 policies of the Coastal Act. However, due to the constraints on the site, the City also has numerous relevant policies that it applies to the prospective development subject to the LUP revision. As such, all applicable Coastal Act policies relating to the preservation of environmentally sensitive habitat areas (ESHA) will be listed first, with the pertinent City certified LCP policies to follow. Consistency of the proposed land use amendment with the two set of policies (Coastal Act, City’s LCP) will also be discussed respectively. However, as previously stated, the City’s other land use policies and subsequent findings are included only to further illustrate the redesignation’s inconsistency with the Coastal Act when viewed in the context of a specific development proposal and to provide an example of how the City’s current Implementation Plan policies are being implemented.

1. Environmentally Sensitive Habitat Areas/Fire Suppression/Steep Slope Encroachment

a. Applicable Coastal Act Policies

The Coastal Act provides:

Section 30230

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. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial recreational, scientific, and educational purposes.

Section 30240.

(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 30251

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. [emphasis added]

Section 30253

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. City of Carlsbad ESHA Policies

The City's LCP is divided into 5 segments; this project site is located within the Agua Hedionda segment. To date, no Implementation Plan has been certified for the Agua Hedionda Area and, as such, the Coastal Act remains the standard of review. In 2003, the Coastal Commission approved the City of Carlsbad's Habitat Management Plan (HMP) as a component of the City's LUP; however, similar to the Agua Hedionda Land Use Plan, no implementation plan has been approved for the HMP. Because the project includes a large number of applicable policies, the general policies addressing protection of ESHA are listed below and specific policies are included in appropriate sub-headings following them.

Agua Hedionda Land Use Plan (LUP) Policies

3. Environmentally Sensitive Habitats, Water, and Marine Resources

3.6 The Implementation phase of the LCP shall include specific provisions for assuring protection of wetlands in the design of adjacent new development, including provision of adequate buffer areas, protective fencing, revegetation, etc.

4. Geologic Hazards

4.4 Recognizing the unique environmental features of the lagoon and its environs and the sensitivity of the area to soil erodibility and sedimentation, development shall be regulated as follows:

[...]

b. Development, grading and landform alteration in steep slope areas (25%) shall be restricted. Exceptions may include encroachments by roadway and utilities necessary to reach developable areas. The maximum allowable density shall be calculated on the total lot area, although this may be modified through setbacks, plan review, or other requirements of this plan and applicable city regulations.

c. Use of Planned Development (PD) Ordinance and cluster development shall be required in areas containing environmentally sensitive resources, extensive steep slope areas and significant natural landform features.

HMP Provisions

Based on existing distribution of vegetation communities and sensitive species, the City's HMP identifies a number of "Core and Linkage" areas throughout the City. The subject site is located within what is identified as the "Core 4 Focused Planning Area" which includes the Agua Hedionda Lagoon area and important linkages east of the lagoon. The HMP identifies that this core and linkage area contains a number of important vegetation communities including salt marsh, freshwater marsh, riparian scrub and coastal sage scrub. Utilizing the identified focused planning areas and existing and proposed development, the HMP sets up a preserve system that includes hardline properties, standards areas, and existing preserve lands.

a. Hardlines

Certain properties have been designated in the HMP with specific development/conservation footprints, and are known as "hardline" properties. If development is proposed on these sites in a manner that is substantially in conformance with the hardline, the development will be authorized consistent with all other regulatory standards and procedures. The purpose of this process is to ensure that certain areas of onsite habitat will be set aside for permanent preservation, and that the property owners have committed to abide by the established development limitation upon approval of the HMP. As an example, the proposed land use redesignation here would represent the delineation of a "hardline" for this property since there is a specific project that is a companion to the LUP revision.

b. Standards Areas

The second category of preserve area in the HMP contains the "standards" areas, for which the HMP contains guidance relative to future habitat preservation and the siting of new development. The standards areas involve specific undeveloped properties within the City that are located in the biological core and linkage areas. These properties are proposed to have conservation goals and standards which would allow at least 25%

development of the site, but which provide for minimum conservation of 67% of coastal sage scrub and 75% of gnatcatchers on each site. Several areas have significantly higher standards for greater protection of individual resource areas. Emphasis is placed upon creation of preservation corridors and linkage to the larger MHCP habitat areas. Projects proposed within the standards areas will also require additional consultation with the City and the wildlife agencies to determine whether the project complies with the relevant standards and is consistent with the HMP. Upon receiving approval of their development plans, these property owners will receive “take” of endangered species authorization from the U.S. Fish and Wildlife Service.

c. Existing Preserve Areas

The third category contains existing preserve lands, such as the City’s three coastal lagoons and associated wetlands, the Dawson Los Monos Reserve, the Carlsbad Highlands Mitigation Bank, and other preserves located within previously-approved development. These areas, which include both private and public land, have already been conserved for their wildlife value through previous development actions, such as mitigation banks and required open space.

The Coastal Commission acknowledged that the HMP would allow some development involving incidental take of listed species and/or environmentally sensitive habitat in those areas where it is most appropriate, in order to preserve the largest and most valuable areas of contiguous habitat and their associated populations of listed species.

Relative to the proposed development, the project is adjacent to the Agua Hedionda Lagoon Hardline Preserve area and an identified standards area (Local Facilities Management Zone #1). Zone #1 is described in the HMP as being almost entirely developed, but containing scattered fragments of natural vegetation, including coastal sage scrub areas that support California gnatcatchers. The HMP further states that much of the remaining vegetation is on the slopes adjoining the lagoon, thus contributing to the biological value of the lagoon watershed. Conservation goals for Zone #1 include the following:

- Conserve the majority of sensitive habitats in or contiguous with biological core areas, including no net loss of wetland habitat, and preserve coastal sage scrub and maritime succulent scrub adjacent to lagoons. Retain and manage natural habitats adjacent to lagoons to buffer wetland resources from adverse effects...

The HMP further details planning standards for Zone #1 that include the following:

- Avoid removal of maritime succulent scrub and any patches of coastal sage scrub in or contiguous with biological core areas [Agua Hedionda Lagoon]. Preserve at least 50% of coastal sage scrub with preference for avoidance of any areas that contain gnatcatchers. If impacts to native habitats cannot be avoided, mitigate by creation or enhancement of like habitats adjacent to lagoons, or by offsite

compensation or restoration within biological core and linkage areas. Maximize the preservation of habitat adjacent to the lagoon.

However, it is important to note that this specific property is designated as a “development area” (i.e. no specific standards or hardlines have been established for this site). So, it is unclear at this time how the City intended to implement the standards associated with Zone 1 at this specific site. That being said, because the project is located in the Coastal Zone, the project is required to comply with the additional conservation standards applied to properties in the Coastal Zone, including the following:

The HMP has additional Conservation Standards to be applied to properties in the Coastal Zone and states:

7-1 Environmentally Sensitive Habitat Areas (ESHA)

Pursuant to Section 30240 of the California Coastal Act, environmentally sensitive habitat areas as defined in Section 30107.5 of the Coastal Act, shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

7-2 Coastal Sage Scrub

Coastal Sage Scrub is a resource of particular importance to the ecosystems of the Coastal Zone, due in part to the presence of the Coastal California gnatcatcher (Federal Threatened) and other species. Properties containing Coastal Sage Scrub located in the Coastal Zone shall conserve a minimum of 67% of the Coastal Sage Scrub and 75% of the gnatcatchers onsite. Conservation of gnatcatchers shall be determined in consultation with the wildlife agencies.

7-8 No Net Loss of Habitat

There shall be no net loss of Coastal Sage Scrub, Maritime Succulent Scrub, Southern Maritime Chaparral, Southern Mixed Chaparral, Native Grassland, and Oak Woodland in the Coastal Zone of Carlsbad.

7-9 Upland Habitat Mitigation Requirements

Where impacts to habitats stated in 7-1 are allowed, mitigation shall be provided as follows:

- a. The no net loss standard shall be satisfied as stated in 7-8. Typically, this will consist of creation of the habitat type being impacted (or substantial restoration where allowed) at a ratio of at least 1:1 as provided in the HMP.
- b. Onsite preservation is not eligible for mitigation credit in the coastal zone. Onsite or offsite open space preserve areas may be utilized to satisfy the required

mitigation for habitat impacts associated with development if the preserve areas are disturbed and suitable for restoration or enhancement, or they are devoid of habitat value and therefore suitable for the 1:1 mitigation component requiring creation or substantial restoration of new habitat. Substantial restoration is restoration that has the effect of qualitatively changing habitat type and may meet the creation requirement if it's restored habitat type that was historically present, but has suffered habitat conversion or such extreme degradation that most of the present dominant species are not part of the original vegetation. Substantial restoration contrasts with enhancement activities, which include weeding, or planting within vegetation that retains its historical character, and restoration of disturbed areas to increase the value of existing habitat which may meet other mitigation requirements pursuant to the HMP.

- c. Impacts to Coastal Sage Scrub shall be mitigated at an overall ratio of 2:1, with the creation component satisfying half the total obligation. The remainder of the mitigation obligation shall be satisfied pursuant to the provisions of the HMP.

Coastal Resource Protection Overlay Zone

The subject site is within the City's Coastal Resource Protection Overlay Zone, which contains a policy addressing the preservation of steep slopes and vegetation and states:

- a. *Preservation of Steep Slopes and Vegetation.* Any development proposal that affects steep slopes (twenty-five percent inclination or greater) shall be required to prepare a slope map and analysis for the affected slopes. The slope mapping and analysis shall be prepared during the CEQA environmental review on a project-by-project basis and shall be required as a condition of coastal development permit.
 - i. Outside the Kelly Ranch property, for those slopes mapped as possessing endangered plant/animal species and/or coastal sage scrub and chaparral plant communities, the following policy language applies:
 - a. Slopes of twenty-five percent grade and over shall be preserved in their natural state, unless the application of this policy would preclude any reasonable use of the property, in which case an encroachment not to exceed ten percent of the steep slope area over twenty-five percent grade may be permitted [emphasis added]
 - b. ...
- [...]
- g. *Brush Management.* A fire suppression plan shall be required for all residential development adjacent to designated open space subject to approval by the city fire department. The fire suppression plan shall incorporate a combination of building materials, sufficient structural

setbacks from native vegetation and selective thinning designed to assure safety from fire hazard, protection of native habitat, and landscape screening of the residential structures. No portions of brush management Zones 1 and 2 as defined in the city landscape manual shall occur in designated open space areas. Zone 3 may be permitted within designated open space upon written approval of the fire department and only when native fire retardant planting is permitted to replace high and moderate fuel species required to be removed.

Habitat Management Plan's adjacency standards, the most applicable of which states:

F - Preserve Management

5. Adjacency Standards

A. Fire Management: Management Issues

Fire Management between habitable structures and natural habitats must accomplish two objectives: (1) protection of the biological resource, and (2) a satisfactory level of protection for humans and property.

[...]

Fire management for human safety is one of the City's highest priorities. With proper planning, this can be accomplished in a manner that is compatible with conservation of biological resources. Fire management for human hazard reduction involves providing adequate setbacks for new development from conserved habitat areas, educating the public regarding effective fire prevention methods, reducing fuel loads in areas where fire may threaten human safety or existing development, suppressing fires once they have started, and providing access of fire suppression equipment and personnel.

The City of Carlsbad's Landscape Manual requires fire suppression zones associated with development and states:

F3-Requirements

Design, installation, and modification of existing vegetation shall be in conformance with one of the following "conditions" or as required or modified by the City.

It shall be the responsibility of the applicant to develop a plan which meets the fire protection requirements. Environmental constraints or other restrictions placed upon the development shall not be considered justification for modification or subordination of fire protection standards. The site planning of the development shall satisfy both the fire protection standards and environmental constraints. [emphasis added]

F3-2 CONDITION B - NATIVE SLOPES-WILDLAND FIRE SUPPRESSION

Pertains to areas where removal of environmentally sensitive native vegetation is restricted within the fire sections.

Section B1 - measured 20' horizontally from the outlying edge of the structure(s) toward the environmentally restricted area as defined by the City.

1. Removal of "high fuel and moderate hazard species" as listed in Appendix E 1.
2. Planting with ground cover or low growing shrub species (less than 3' in height) known to have fire retardant qualities or as otherwise required by the City...

Section B2 - measured horizontally 20' outward from the outlying edge of B1.

1. Removal of "high fuel species" as listed in Appendix E1.
2. Removal by selective pruning of up to 60% of the volume of the "moderate fuel species as listed in Appendix E1...

Section B3 - measured horizontally 20' outward from the outlying edge of Section B2. The outer edge of B3 shall extend horizontally to a point at least 60' from structures.

1. Removal of "high fuel species" as listed in Appendix E1.
2. Removal by selective pruning of up to 40% of the volume of the "moderate fuel species" as listed in Appendix F.1...

Agua Hedionda Land Use Plan (LUP) Policies

4.4 c. Use of Planned Development (PD) Ordinance and cluster development shall be required in areas containing environmentally sensitive resources, extensive steep slope areas and significant natural landform features.

However, the Planned Development Regulations also state:

21.45.020 Applicability

D. If there is a conflict between the regulations of this chapter and any regulations approved as part of the city's certified local coastal program, a redevelopment plan, master plan, or specific plan, the regulations of the local coastal program, redevelopment plan, master plan, or specific plan shall prevail.

c. Habitat Types Found on the Project Site

The following is a description of each of the habitat types found on the project site as reported in the Preliminary Biological Assessment for the companion development project prepared by Planning Systems, dated May 9, 2007:

(1) Coastal Sage Scrub (0.84 acre)

Coastal sage scrub (CSS) is a drought-deciduous community comprised of aromatic shrubs with a diverse understory of annual and perennial herbs, perennial and annual grasses, and grass-like plants. It supports a variety of sensitive plant species, and is the primary habitat of the coastal California gnatcatcher.

On-site, CSS occupies all undisturbed upland areas of the parcel, even at elevations near the lagoon water surface along the southern property line. Dominant species include Coast sage brush (*Artemisia californica*), Flat-top buckwheat (*Eriogonum fasciculatum*), and Black sage (*Salvia melifera*). Sub-dominants include erba santa (*Eriodictyon crassifolium*), and Bush sunflower (*Encelia californica*).

Additionally, two species listed on the California Native Plant Society Inventory of Rare and Endangered plants: 1) Spinethrush (*Adophia californica*) was found colonizing the slopes just above a flat bench near the lagoon edge, and, 2) Southwestern spiny rush (*Juncas acutus ssp. Leopoldii*) was found on a bluff “bench” just above the lagoon water surface.

(2) Non-Native Grasslands (0.28 acre)

Non-native grassland is characterized by annual grasses such as wild oats, bromes, and others. This vegetation type is not considered a sensitive habitat, but in some locations it may be a significant resource for raptor foraging. This habitat exists along the eastern property line where brush management activity has occurred over recent years. Non-native species including Perennial mustard (*Hirschfeldia incana*), Yellow-star thistle (*Centaurea melitensis*), and Brome grasses (*Brome sp.*) dominate the brush-managed vegetation. A substantially occurring sub-dominant is the ornamental Sweet alyssum (*Lobularia maritima*). A scattering of re-emerging natives persist though they are subject to regular mowing (emphasis added). Native observed include Bush sunflower (*Encelia californica*), Deerweed (*Lotus scopius*), and Flat-top buckwheat (*Eriogonum fasciculatum*). [emphasis added]

(3) Open Water / Rock Beach (0.01 acre)

Open waters and/or rocky beach of Agua Hedionda Lagoon occur in the southeastern corner of the property.

(4) Wetlands

The subject property extends down to the open water reaches of Agua Hedionda Lagoon and supports wetland habitat along the terrestrial margin of the lagoon. In 1998 and 2001, Dudek and Associates conducted a wetlands delineation study for the North Agua Hedionda Interceptor Western Segment Sewer Maintenance Project to identify potential “waters of the United States” and jurisdictional wetlands...

[...]

Seth Schulberg, a Planning Systems biologist surveyed the property above the 5 foot contour to determine if any wetland indicators were present. None of the standard wetland indicators (hydric soils, wetland hydrology, or wetland plants) were observed above the 5 foot contour. No incised channels that would constitute non-wetland jurisdictional and non-jurisdictional wetland areas are confined to the area below the 5 foot contour onsite. The proposed project does not encroach or impact this area.

d. Wildlife Found on the Project Site

According to the Preliminary Biological Assessment for the project, a variety of wildlife can be found on the project site including three species of butterflies, four species of reptiles, sixteen species of birds, and six mammalian species. Of the wildlife surveyed, one sensitive species was identified, coastal California gnatcatchers, and due to their state and federal listings as a threatened species, the biological report concluded that an additional survey specifically documenting the presence of gnatcatchers be completed.

In 2006, Lincer and Associates completed a gnatcatcher survey onsite consisting of three separate hour long surveys of the property all within the month of October, 2006. The gnatcatcher survey again noted the presence of gnatcatchers at this project location.

e. Impacts and Proposed Mitigation

In the companion proposal supported by this amendment, the construction of the proposed two single family homes, and private access driveway will result in direct permanent impacts to biological resources on the subject site. The following table details the type and acreage of each habitat impacted by the proposed development:

Table 1

<u>HABITAT TYPE</u>	<u>TOTAL</u> (acres)	<u>PERMANENT IMPACTS</u> (acres)
Coastal Sage Scrub	0.84	0.27
Non-Native Grassland	0.28	0.25
Open Water/Rocky Beach	0.01	0.00
Disturbed	0.02	0.02
Total	1.15*	0.54

* Total Project Area = Lot + ROW + Off-site improvements (1.08 + 0.06 + 0.01 = 1.15)

The above described acreages include all direct impacts. While the MND broke up impacts into two categories (permanent and temporary), these impacts will all result in the removal of vegetation/habitat and the Commission does not differentiate the temporary impacts from permanent. However, while the environmental report differentiates between temporary and permanent impacts to CSS, the City's staff report, and thus the mitigation (Table 1 & 2) required includes both temporary and permanent impacts, thus the total mitigation requirements are correct. That being said, the environmental review, biological report, or all other technical documents reviewed by the Commission failed to include an explanation as to how the temporary impacts were calculated. A component of the proposal requires the improvement of an 8' wide pedestrian/bike path at the southern edge of the property. It is unclear how access will be gained through the sensitive habitat to the location of the proposed trail. This lack of information raises concerns as to the accuracy of that estimation. As previously discussed, the project currently maximizes the possible development footprint. Thus, an oversight (i.e. additional access requirements associated with construction of the public trail) may result in additional and unmitigated impacts to ESHA, thus amplifying the project's inconsistency with the Coastal Act.

Table 2

Habitat Type	Proposed Impacts	Mitigation Ratio	Required Mitigation	Proposed Onsite Preservation
Coastal sage scrub	0.27 acres (32.2%)	2:1	0.54 acres	0.57 acres (67.8%)

To mitigate the project-based impacts, the applicant is proposing a combination of creation, revegetation, restoration and preservation. Consistent with the typically required mitigation for impacts to coastal sage scrub, the applicant is proposing to mitigate the proposed impacts (0.27 acres) at a 2:1 ratio, with at least 1:1 of that being mitigated through creation to ensure no net loss of habitat (Table 2). The additional 0.27 acres will be mitigated through additional creation, or substantial restoration. While no specific lands have been acquired for the habitat creation or restoration, the applicant has submitted a draft purchase agreement for coastal sage habitat located within the coastal zone with the North County Habitat Mitigation Bank for the 0.27 acres of coastal sage habitat located within the coastal zone, consistent with the no net loss/1:1 creation requirement certified as part of the City's Habitat Management Plan. The mitigation for the remaining 0.27 acres of creation or substantial restoration required has not been identified by the applicant to date.

f. Specific Findings for Denial

1. Coastal Act Specific Findings for Denial

The City is proposing a revision to its Land Use Plan to change a portion (.6 acres) of a 1.08-acre site containing ESHA from a Residential (R-1) to an Open Space (OS) designation. The project site is located in the south side of Adams St. and directly inland of Agua Hedionda Lagoon. The subject land use revision is a project driven amendment. The revision, through the establishment of an excessive development footprint that fails to preserve all the on-site ESHA, will facilitate the subdivision of the lot into 4 lots, two (2) to be constructed with two-story single family homes, one (1) constructed with an access driveway; and one (1) to be preserved as open space. The delineation of the line separating development (Lots 1, 2, 3) from preserved land (Lot 4) will be the focus of this analysis. The Commission's technical staff has reviewed the biological reports and visited the site and concurred that the site contains occupied Coastal sage scrub habitat and, thus found that the habitat constitutes an ESHA. Therefore, Section 30240 of the Coastal Act applies.

The proposed development facilitated by the land use change results in numerous concerns regarding consistency with Section 30240 of the Coastal Act. The main and general concern associated with the proposed amendment is that it will facilitate a development that is not considered a permitted use, in that Section 30240 limits impacts

to ESHA for projects that can be considered a use dependent on the resources. Residential development is not considered a resource-dependent use. Specific concerns include the intensity of development on a lot containing ESHA, the lack of adequate brush management, and the subdivision of a constrained lot into multiple sub-standard lots. As proposed, the development associated with the land use modification results in impacts to sensitive habitat too significant to be found consistent with the Chapter 3 policies of the Coastal Act.

The principal concern regarding the delineation of residential and open space land uses on this lot is that the change in designation will establish a development envelope that is excessive and fails to protect ESHA present on site. The LCP amendment proposes a line separating residential land from open space that will facilitate development of 45% of the lot. This delineation results in the removal of 0.27 acres of *occupied* Coastal sage scrub.

Traditionally, the Commission would first seek to eliminate any impacts to ESHA before approving development on a site. If, due to site constraints, the elimination of impacts is not feasible, the Commission then limits development types to only uses dependent on those resources. Residential development is not considered a development type that is “dependent on those resources.” Thus, the proposed impacts to ESHA for residential development are not permitted and cannot be found consistent with the Section 30240 of the Coastal Act *in general*.

Moreover, additional *specific* concerns remain regarding consistency of the project’s design with Section 30240. These concerns include that the development footprint approved by the City did not include any biological buffers, or provide adequate safety for the proposed structures in the form of brush management. Again, the City is proposing to allow development of 45% of the lot. As such, approval of the LCP amendment would establish a future development envelope that encroaches into ESHA, and thus, impacts to ESHA could take place in an area greater than that which can be found consistent with Section 30240 of the Coastal Act. Therefore, the proposed amendment must be denied.

Secondary concerns result directly from the proposed development on the site and include lack of brush management and compatibility of the development with the character of the surrounding community. Section 30253 of the Coastal Act requires that new development be sited to minimize risks to fire hazard. The subject site is dominantly vegetated by Coastal sage scrub, often considered to be a highly flammable vegetation type. Furthermore, the subject site is adjacent to additional undeveloped lots containing the same habitat type, thus the need for fire clearance is likely. Over the past decade, southern California has seen a rise in volatile and uncontrollable wildfires. As a result, the Commission has seen numerous requests for removal of sensitive vegetation, often on land directly adjacent to lagoon waters, in order to create what could be considered as an appropriate wildland/urban interface. Most recently, the standard distance proposed for fuel modification is typically 100’ from any habitable structure in most communities. In this case, the project has been approved with *zero* feet for a fire suppression or brush management zone. The Mitigated Negative Declaration associated with the project

determined that building and structural improvements in lieu of providing adequate setbacks and fire suppression zones would be sufficient. These improvements include:

- a) No exposed wood throughout the project, including gates, fences, decks, etc.
- b) Interior fire sprinklers in both residences
- c) Class A roof with no vents on the westerly side of either home
- d) Parking areas and driveways are sited to allow for adequate fire department access...

It is important to note that the City required and received comments from the Carlsbad Fire Marshal supporting the design improvements in lieu of the City's traditional 60' fire suppression zone as required by the City. However, the previously stated factors lead to concerns regarding future potential impacts to ESHA associated with brush clearance. First, *brush management activities are currently being undertaken onsite* for the adjacent home to the east within the portion of the lot containing non-native grasses. Specifically, the biological report associated with the development describes the Non-native grassland area as:

Non-native grassland is characterized by annual grasses such as wild oats, bromes, and others. This vegetation type is not considered a sensitive habitat, but in some locations it may be a significant resource for raptor foraging. This habitat exists along the eastern property line where brush management activity has occurred over recent years. Non-native species including Perennial mustard (*Hirsfeldia incana*), Yellow-star thistle (*Centaurea melitensis*), and Brome grasses (*Brome sp.*) dominate the brush-managed vegetation. A substantially occurring sub-dominant is the ornamental Sweet alyssum (*Lobularia maritima*). A scattering of re-emerging natives persist though they are subject to regular mowing. Native observed include Bush sunflower (*Encelia californica*), Deerweed (*Lotus scopius*), and Flat-top buckwheat (*Eriogonum fasciculatum*). [emphasis added]

Further, while a zero foot brush management area may be acceptable by the fire department now, it seems likely that such a determination may be modified in the future. And, as previously stated, the proposed modification to the land use designation would allow development on 45% of the property. The project associated with the land use redesignation proposes to utilize all 45% for development. Thus, the project already maximizes the potential development onsite and the project design provides no "buffer". So, should any brush management activities be required in the future, they would have to occur within the open space preservation area and would result in additional impacts to ESHA. Thus, given the fluidity and power of wildfires, and the potential future need for increased protection leading to additional impacts to ESHA, the LUP Amendment that facilitates such development cannot be found consistent with Sections 30253 and 30240 of the Coastal Act, and shall be denied.

Section 30251 of the Coastal Act requires that all new development be visually compatible with the character of surrounding areas. The project is located adjacent to a single family home to the east, Adams Street to the north, Agua Hedionda Lagoon to the

south, and undeveloped, residentially designated lots to the west. As part of the project proposal, the single existing lot will be subdivided into four (4) lots, three of which will be used for development. The surrounding community is comprised mostly of one single family home on each lot. The subdivision would facilitate two homes on one lot, inconsistent with the general trend of the neighborhood. Further, given the additional constraints on the lot, including ESHA, wetlands, steep slopes, and brush management, the subdivision is contrary to the present development pattern and out of character with the surrounding community and thus cannot be found consistent with Section 30251 of the Coastal Act.

2. City of Carlsbad Specific Findings for Denial

Again, while the Coastal Act is the legal standard of review, the City has a number of policies addressing development on sites of this nature. These can serve to provide examples of how the City is currently implementing its LCP. Currently, this segment of Carlsbad does not have a certified Implementation Plan (IP); however, should the City come forward with a proposed IP at some point in the future, the Commission will be knowledgeable on the issues associated with the City's current interpretation of its uncertified IP and can address any concerns at that time. Additionally, the review of the City's LUP policies further illustrates why the redesignation of a portion of the site as open space is inconsistent with the Coastal Act. Therefore, included in the review, are applicable City LCP policies, and uncertified zoning policies, in order to review and outline how the City's approval is inconsistent with its certified LCP. Relevant policies are found in the Agua Hedionda Segment of the City's Land Use Plan, the Habitat Management Plan, and the Implementation Plan and are listed in Section III. b (City of Carlsbad ESHA Policies) of the staff report.

The project is located on a 1.08-acre lot that contains wetlands, occupied coastal sage scrub, and steep slopes and is located directly adjacent to Agua Hedionda Lagoon. The proposed development will result in impacts to 0.27 acres of occupied coastal sage scrub. The project also impacts 0.02 acres of dual criteria slopes. Similar concerns are raised for both the Coastal Act and the City's LCP when reviewing the appropriateness of proposed project. Again, the primary concerns being: impacts to Coastal sage scrub and steep slopes containing sensitive habitat (defined as dual criteria slopes by the City), adequate conservation of California gnatcatchers, unspecified temporary impacts, and general overdevelopment of the lot. The main component of the City's certified LCP that is applicable at this site is the Habitat Management Plan.

In 1993, the coastal California gnatcatcher was listed as threatened under the federal Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.* The coastal California gnatcatcher is found primarily in coastal sage scrub habitat in southern California. Based upon scientific estimates, coastal sage scrub habitat in San Diego County has been reduced by more than 70% of its original coverage. Fewer than 900 gnatcatcher pairs likely remain in the county; however, San Diego County currently supports the largest gnatcatcher population in California and presents the most significant opportunity for large-scale preservation of the species. This listing has had a significant effect on future public and private development in areas containing gnatcatcher habitat.

In order to proceed, development in areas with gnatcatchers would have to completely avoid a “take” of this species or else receive federal authorization for such an impact. Several other species have been listed under the federal or state ESA since 1993; currently, approximately 25 species that are listed or proposed for listing occur in or are associated with habitat located in Carlsbad.

The Carlsbad HMP and the Multiple Habitat Conservation Program (MHCP) are intended to meet criteria for the California Department of Fish and Game’s (CDFG) Natural Communities Conservation Planning process (NCCP), which was initiated in southern California in 1991 and of the federal Endangered Species Act (ESA).

In 1992, the City signed an NCCP agreement with the California Resources Agency to develop the Habitat Management Plan (HMP) as part of the City’s General Plan. The 1992 agreement enrolled the City in the NCCP program as an “Ongoing Multi-Species Plan” as defined in the NCCP process guidelines. The agreement was supplemented in 1993 to clarify that the HMP is a subarea plan of the San Diego County MHCP. The adopted Carlsbad HMP is intended to satisfy the requirements of a federal HCP, and to function as a subarea plan of the regional MHCP under the NCCP.

On June 12, 2003, the California Coastal Commission approved a Local Coastal Program (LCP) amendment request for the adoption of the City’s Habitat Management Plan (LCPA 1-03B). In its action, the Commission adopted land use plan revisions to the Carlsbad LCP, and incorporated the City’s Habitat Management Plan (HMP) into the certified LCP. The modifications addressed revised development limitations on specific properties and included additional requirements for development of the preserve management plan. The Carlsbad HMP was prepared to satisfy the requirements of a federal Habitat Conservation Plan (HCP), and as a subarea plan of the regional Multiple Habitat Conservation Plan (MHCP). The MHCP study area involves approximately 186 square miles in northwestern San Diego County. This area includes the coastal cities of Carlsbad, Encinitas, Solana Beach and Oceanside, as well as the inland cities of Vista and San Marcos and several independent special districts. The participating local governments and other entities will implement their portions of the MHCP through individual subarea plans such as the Carlsbad HMP. Once approved, the MHCP and its subarea plans replace interim restrictions placed by the U.S. Fish and Wildlife Services (USFWS) and the California Department of Fish and Game (CDFG) on impacts to coastal sage scrub and gnatcatchers within that geographical area, and allow the incidental take of the gnatcatcher and other covered species as specified in the plan.

In its action on City of Carlsbad LCP Amendment No. 1-03B in June 2003, the Commission certified the HMP as part of the LCP and found it to meet the requirements of Sections 30240 and 30250 of the Coastal Act despite some impacts to environmentally sensitive habitat area (ESHA). The Commission found that, pursuant to Sections 30007.5 and 30200(b), certification of the HMP with suggested modifications was, on balance, the alternative that was most protective of significant coastal resources.

The subject site is located in area identified by the HMP as a development area, and, as such, does not have specific development standards. However, the HMP vegetation maps failed to identify this lot as containing any Coastal sage scrub (Figure 17 of the HMP). When the Commission reviewed the HMP for consistency with the Coastal Act, many of the known sensitive areas, or areas with high habitat value, were given specific standards for development. Thus, it is unclear why this parcel was not included in these *standards* areas. However, in the absence of specific development standards, the HMP provides general development standards for parcels located within the coastal zone. Therefore, the most applicable HMP policies require the preservation of 67% of Coastal sage scrub and 75% of gnatcatcher populations on site.

The proposed project will result in impacts to 33% of the CSS found onsite (.027 acres). Additionally, the biological report and the Mitigated Negative Declaration identify the property as a site that is *occupied by California gnatcatchers*. The California gnatcatcher is federally listed as a threatened species. The biological report indicated that a focused gnatcatcher survey should be completed for the site. The focused gnatcatcher survey consisted of three surveys of the site on October, 2006 and determined:

During one of the three surveys (October 20, 2006), I observed 3 coastal California gnatcatchers on, and next to, the site (figure 3); two adults (unknown sexes due to the plumage at this time of the year) and one bird of the year, based on behavior and appearance). They were observed briefly foraging in the middle of the site and along the shoreline, in a somewhat open area.

The fact that these birds were only observed once during my three surveys of the site and adjacent habitat suggests that they are spending a substantial amount of time off the subject site, probably on the adjacent undeveloped lots that still support CCS.

However, the Commission's staff ecologist reviewed this gnatcatcher survey, and responded:

In Oct (sic) gnatcatchers are not territorial and range fairly widely...still occupied CSS and still ESHA.

The City's HMP requires the preservation of 75% of gnatcatchers onsite; however, given the proponent's biologist's conclusion that the gnatcatchers are spending a substantial amount of time off the subject site, this HMP principle appears to have been disregarded. The City defined the site as occupied CSS, however, there is no discussion as to how the preservation of 75% of the gnatcatchers was being accomplished. Furthermore, there have been no additional surveys conducted during the time of year when gnatcatchers exhibit territorial behavior, thus the number of gnatcatchers present onsite has not been determined, nor the appropriate mitigation determined. Therefore, the impacts (and lack of mitigation) cannot be found consistent with the City's HMP.

As detailed above, the project reaches the absolute maximum permissible impacts to CSS (33% or 0.27 acres), of which approximately 0.01 acres were classified as temporary

impacts. However, there is nothing specific as to how the extent of temporary impacts were determined. As previously stated, the Coastal Commission doesn't consider removal of vegetation as a temporary impact. The project includes the construction of an 8' pedestrian/bicycle accessway just inland of the lagoon edge on the westernmost portion of the lot. However, the project fails to determine how access to this portion of the lot associated with the construction of the trail will be gained. In order to grade the trail, access will almost certainly have to be provided through the site (and any ESHA). Thus, without an exhaustive review of all impacts to ESHA including access and other activities not directly related to construction of the homes, it is unclear how much ESHA will be impacted by the proposed project, but it will likely be more than the 0.27 acres identified.

The HMP further limits highly constrained sites (defined by having over 80% or more of the lot contain ESHA) to development on no more than 25% of the lot. In this case, the lot is highly constrained, contains steep slopes, sensitive coastal sage scrub vegetation, wetland habitat and gnatcatchers, and is adjacent to both Hardline (Agua Hedionda Lagoon) and standards areas (Lots west of subject site). However, the definition for highly constrained sites included in the HMP, is limited to sites containing ESHA on 80% or more of the property. 78.7% of the subject site is currently vegetated by ESHA (ref. Table #1). Further, the biological report includes the area of disturbed habitat is currently being maintained as a fire suppression zone for the neighboring residence to the east. As such, it is unclear what portion of the subject site would be ESHA if the vegetation weren't being actively removed for brush management. Thus, it is unclear at this time, if the site were left unaltered, if it would be revegetated with the 0.3% (0.003 acres) necessary to require the development to be limited to 25% of the site. Given this ambiguity, the more conservative approach, defining the site as a highly constrained site, might have been the more appropriate City certified standard of review.

Second, the City approved the project with a zero foot brush management zone (defined by the City as a fire suppression zone). The City's HMP and Landscape Manual have requirements for fuel suppression zones, and can be generally defined by three zones (Zone 1, Zone 2, Zone 3), each zone being twenty feet in width, measured from the edge of the development to the edge of preserved habitat, and each zone having different levels of fuel suppression activities. Zone 1 is the most severe following to Zone 3 being the least severe respectively. As previously listed, the project has instead proposed a zero foot fire suppression zone, utilizing a number of improvements in the structural design in lieu of providing the physical fire suppression barrier. This design has received an endorsement by the City's Fire Marshal. However, given that brush management activities are currently taking place to protect the adjacent structure, as well as the current unknown(s) regarding potential changes in the environmental conditions that affect wildfire frequency associated with global warming and climate change, such as. dryer conditions, stronger winds, increase in violent storms, authorizing a home directly adjacent to sensitive habitat that is generally considered to be highly-flammable may be shortsighted. Furthermore, given that the project will already occupy the maximum area possible, any future fire suppression activities would be at the cost of the sensitive habitat, which through the City's conditions of approval, is now protected by a

conservation easement and is designated as Open Space. Therefore, the project cannot be found consistent with the City's applicable policies pertaining to brush management, or fire suppression zones.

Lastly, the proposal includes subdividing an existing lot on a site currently zoned as Residential (R-1-15,000) Zone, which requires a 15,000 square foot minimum lot size. However, the City approved a subdivision resulting in lots less than 15,000 square feet through the City's Planned Development Ordinance.

The primary concern associated with the project is that the construction footprint will result in significant impacts to ESHA. Part of this concern stems directly from the approval of the subdivision. While subdivisions are often approved on lands containing sensitive resources to separate the open space from the development, this subdivision includes three (3) developable lots, two of which will be developed with single family residences and one (1) the private driveway. The City's staff report approving development states:

A Planned Development Permit (PUD) is proposed in order to cluster development on the site. The 1.08-acre site is constrained by both topography and environmentally sensitive habitat. Furthermore, the site is located directly adjacent the Agua Hedionda Lagoon, which the HMP recognizes as a Hardline Preserve Area. The combined constraints would preclude standard development of the site under the R-1-15,000 Zone. The clustered design is proposed because one of the main purposes of the Planned Development Regulation is to allow for the clustering of development when impacts to environmentally and topographically constrained land would preclude the full development of a site as a standard single-family subdivision. [emphasis added]

However, what the City failed to include in its analysis is that the Planned Development Regulations do not allow for the subdivision of parcels into sub-standard lots, if the subdivision will result in a conflict between the regulations of that chapter and any regulations approved as part of the city's certified local coastal program. Again, Regulation 21.45.020 states:

If there is a conflict between the regulations of this chapter and any regulations approved as part of the city's certified local coastal program, a redevelopment plan, master plan, or specific plan, the regulations of the local coastal program, redevelopment plan, master plan, or specific plan shall prevail.

Furthermore, the City's staff report suggests that prohibiting the subdivision of the lot would preclude "standard development". However, the proposed development is the only lot on Adams Street to propose two (2) single family residences on one existing lot. The remaining lots located east of the subject site are all developed with one (1) single family residence per lot. Thus, it could be asserted that *standard development* would include the subdivision of the lot into only two (2) parcels, one facilitating some kind of single family development, one preserving the sensitive habitat as open space. As

proposed, the project results in sub-standard lots and significant impacts to ESHA. The proposed development maximizes the development footprint, to the point of inconsistency with the City's policies regarding Planned Developments and the Coastal Act because the action fails to preserve identified ESHA on the property.

Again, while the legal standard of review for this land use modification is the Coastal Act, the above findings have been included to further illustrate how redesignating a limited portion of the site to open space is inconsistent with the Coastal Act.

g. Alternatives

The City of Carlsbad is the lead agency for purposes of CEQA analysis for this project. Because the City certified a Mitigated Negative Declaration for this project, no alternatives were required as part of its analysis. The proposed development, however, cannot be found consistent with the Coastal Act and as such, the applicants should consider alternative developments that could have fewer adverse environmental impacts. As previously suggested, a single home alternative would not require the approval of a sub-standard sized lot, would not preclude standard development, and could potentially significantly decrease impacts to ESHA. This alternative therefore appears to have fewer environmental impacts than the proposed project. The City has expressed some concerns that this alternative is not likely, as, based on its General Plan; the lot could be developed with up to 3 units. Any development on-site, however, must also be consistent with the Coastal Act, and given that the proposed two home alternative is inconsistent with the Coastal Act, it seems unlikely that a three home alternative would be consistent with the Coastal Act. Thus, this alternative might be found to be environmentally superior to the proposed project.

Another alternative is a two-home alternative other than the proposed project. The construction of a two home alternative might be consistent with the Coastal Act, if alternative designs could eliminate/minimize impacts to ESHA, either through smaller development envelopes or more concentrated clustering of the homes.

That being said, the alternatives identified are not the only potential developments that could be approved on this site. The Commission is not in a position to redesign the development or redelineate the development footprint for this LUP amendment to be consistent with the Coastal Act. Therefore, because there is the potential for alternatives that may decrease the impacts to sensitive resources consistent with the Coastal Act, the land use plan amendment as proposed, must be denied.

h. Conclusion

In conclusion, the proposed development is located in an area overlaid by numerous development standards. Because the site is located in an area of deferred certification, the standard of review remains the Coastal Act. However, because the City's LCP has numerous *specific and qualitative* standards for development, review of the project's consistency by these standards is more tangible. The City's LCP policies were also

included to provide a specific example of how that redesignation would be implemented. In this case, by not designating all the on-site ESHA as “open space”, a development is facilitated that would result in impacts to ESHA inconsistent with the Coastal Act. Further, it provides an opportunity to review how the City is currently implementing its LCP. In this case, the impacts to ESHA associated with the proposed development are both quantitatively and qualitatively inconsistent with both the City’s HMP and Section 30240 of the Coastal Act.

The subject site is highly constrained due to the presence of Coastal sage scrub, steep slopes, wetlands and federally protected California gnatcatchers. The project is further constrained by numerous overlaying policies contained in the City’s certified LUP. However, the standard of review for the project is the Coastal Act and, as such, consistency with the applicable policies must be found. The Coastal Act limits development that results in impacts to ESHA to those types of developments that are dependent on the present resource. Residential development is not the type of use that could be found consistent with Section 30240 of the Coastal Act and thus any impacts associated with such development shall be eliminated. In addition, the project fails to adequately address the preservation of gnatcatchers, the identification and inclusion of impacts associated with previous brush management activities or impacts associated with construction access impacts, and a zero foot fire suppression zone. Therefore, the project cannot be found consistent with the Coastal Act and shall be denied.

2. Visual Resources.

Section 30251 of the Coastal Act, a few policies of the City’s Agua Hedionda Land Use Plan (LUP), and the City’s Scenic Preservation Overlay Zone (IP) address protection of scenic resources within this region and the Coastal Zone and state, in part:

a. Applicable Coastal Act Policies

Section 30251

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 [...]

b. Agua Hedionda LUP/City IP Policies

LUP Policy 8.1

Park Avenue, Adams Avenue [Street] and Carlsbad Boulevard are designated as scenic roadways. Development adjacent to these roads shall maintain a minimum 20’ landscaped buffer between the street and the parking areas. Required landscaped

setbacks may include sidewalks and bikeways, but shall not include parking areas. Parking areas shall be screened from the street utilizing vegetation, tree forms, and berms, as appropriate.

LUP Policy 8.3

Development located adjacent to scenic roadways, or located between the road and shoreline, shall be regulated as follows:

- a) Where a significant elevation difference (e.g. 35 feet) exists between the shoreline and the first parallel public road, as in the case of Hedionda Point and Snug Harbor, no portion of a structure in the intervening area shall be permitted to exceed the elevation of the roadway.

[...]

- c) On all property adjoining the shoreline, permitted development shall be designed to “step down” in height, to avoid casting shadows on shoreline areas and to produce a perceived transition from open space areas to developed areas; and
- d) Any development proposed to be located on or near a significant landform (e.g., Hedionda Point) shall be designed so as to minimize disturbance of natural landforms, and shall be developed in a manner that assures its compatibility and harmony with the natural landform through use of such architectural techniques as terraces or pole foundations and variation of roof lines to complement the topography.

LUP Policy 8.4

All new development in the plan area shall be subject to the provisions of the Carlsbad Scenic Preservation Overlay.

IP Policy 21.40.135

Within the coastal zone, existing public views and panoramas shall be maintained. Through individualized review process, sites considered for development shall be conditioned so as to not obstruct or otherwise damage the visual beauty of the coastal zone. In addition to the above, height limitation and see-through construction techniques should be employed. Shoreline development shall be built in clusters to leave open areas around them to permit more frequent views of the shoreline...

c. Specific Finding for Denial

The proposed project is located along the north shore of Agua Hedionda Lagoon and within the area defined as “Hedionda Point” above, as identified by the Agua Hedionda Land Use Plan. The views of the project site are available to motorists traveling along northbound Interstate 5 (I-5). As required, the roofs of the proposed homes maintain an elevation below that of Adams Street, and including stepping down the buildings in their design. Both of these design features result in minimizing coastal view impacts from Adams Street across the site, to the lagoon, and ultimately the ocean. However, as previously stated, the project site, and thus the proposed development, will also be visible while travelling northbound in Interstate 5. It is unclear at this time whether or not the color palette and landscaping for the homes will be sufficient to allow for the homes to “blend in” with the natural environment. While a conspicuously colored exterior, or lack of landscaping may result in additional concerns related to public views, the proposal is being denied due to its inconsistency with Section 30240 of the Coastal Act.

3. Public Access

The following Public access policies are applicable to the proposed development and state, in part:

a. Applicable Coastal Act Policies

Section 30210

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 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- 1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

2) adequate access exists nearby, or, ...

Section 30213

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

b. Agua Hedionda LUP/HMP Provisions

Pursuant to these sections of the Act, the certified Agua Hedionda Land Use Plan, which is used as guidance, contains a detailed set of public access policies and states:

Policy 7.1

Bicycle routes, and accessory facilities such as bike racks, benches, trash containers and drinking fountains shall be installed at the locations indicated on Exhibit I.

Policy 7.2

Pedestrian accessways shall be located as shown on Exhibit J.

Policy 7.3

All pedestrian trails shall be constructed to a minimum width of 5 feet. Combination bicycle/pedestrian easements and lateral easements shall be a minimum of 25 feet in width.

Policy 7.6 (in part)

Access to and along the north shore of the lagoon shall be made continuous, to the maximum extent feasible, and shall be provided as a condition of development for all shorefront properties. All accessways shall be designed in such a manner as to allow for reasonable use by any member of the general public, and shall be designed to accommodate bicycle as well as pedestrian use. [...]

Pursuant to these sections of the Act, the City's certified Habitat Management Plan contains a policy regarding recreational trails located within buffers and states:

Policy 7-11 (in part)

[...]

No development, grading, or alteration, including clearing of vegetation, shall occur in the buffer area, except for:

[...]

b. Recreational trails and public pathways within the first 15 feet of the buffer closest to the development, provided that construction of the trail or pathway and its proposed use is consistent with the preservation goals for the adjacent habitat, and that appropriate measures are taken for physical separation from sensitive areas. [emphasis added]

c. Specific Findings for Denial

As proposed, the project would include a 25' dedicated lateral access beginning at the mean high tide line (MHTL) landward, as well as an 8' wide improved pedestrian/bicycle trail, consistent with the public access policies contained in both the Coastal Act and the certified Agua Hedionda Land Use Plan. The construction of the trail in its proposed location will, however, result in impacts to CSS and steep slopes.

Lateral access is of significant importance at this location because there is currently no public access available along this site and the lagoon, excluding times of extreme low tides. The City's LUP has a policy, Policy 7.6, which specifically addresses this need and requires any proposed development in this area to include a public access trail. The intent of the Commission certified LUP Policy No. 7.6 is to provide an uninterrupted trail for the public to gain access along the north shore of Agua Hedionda Lagoon.

The location of the proposed trail is positioned to tie into an existing public accessway on the site directly to the east. However, no improved public access trail has been constructed to date. In fact, most of the north shore lagoon-fronting lots between Agua Hedionda Lagoon and Adams Street, are still undeveloped, and thus contain no public access *trails*. To date, lateral access offers to dedicate easements have been recorded on several north shore sites between Adams Street and the lagoon, including Remington (#6-90-93), L&R (#6-88-477), Mellgren (#6-87-36), Abeledo (#6-86-035), a 23-unit Bristol Cove condominium project (CDP #F 1012), Cade (#6-96-159), Huber (#6-98-14) and Gallagher (#6-00-80). Three sites (L&R, Bristol Cove, Cade) were identified as having constructed their segment of the public access path called for in the LUP. However, none of these sites contain sensitive upland habitat. The remaining undeveloped lots west of the subject site also contain sensitive habitat and if improved by a public trail, may also result in impacts to ESHA, and may potentially be inconsistent with Chapter 30240 of the Coastal Act. Thus, while the City's Policy 7.6 does promote public access through the construction of a public trail consistent with numerous policies of the Coastal Act, to do so could result in impacts to ESHA significant enough to be considered inconsistent with Section 30240 of the Coastal Act and, as such, the approval of a trail alignment at this time is premature.

Additionally, the location of the trail is within the required wetland buffer, nearest to the wetland habitat, inconsistent with Policy 7-11 of the City's HMP, which requires the buffer to be located within the first 15 feet closest to the development. In this case, the trail is located in an area nearest to wetlands. The Commission also traditionally requires

trails to be located in the upper portion of a buffer, nearest to development. Thus, the location of the trail with respect to its proximity to wetlands is also not consistent with Section 30240 of the Coastal Act.

These inconsistencies (impacts to ESHA and provision of adequate buffers) should be rectified when the City develops an implementation plan for the Agua Hedionda Lagoon Segment. Until that time, impacts to sensitive habitat including CSS, dual criteria slopes, and wetlands associated with the construction of a public access trail cannot be found consistent with the Coastal Act.

PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. 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 CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LUP amendment submittal, to find that the LUP, or LUP, as amended, does conform with CEQA provisions. The proposed project will result in significant adverse impacts to biologically sensitive habitat. Specifically, the California gnatcatcher occupied coastal sage scrub habitat that will be impacted by the proposed development is considered an ESHA. As an ESHA, it is protected under Section 30240 of the Coastal Act and, therefore, the proposed development envelope is inconsistent with this policy. In addition, there are feasible alternatives available which would substantially lessen any significant adverse impact which the project would have on the environment. Such measures could include reducing the development from two homes to one home thereby eliminating or significantly reducing impacts to ESHA. Therefore, the Commission finds that the proposed development footprint and related delineation of protected open space is not the least environmentally damaging feasible alternative and must be denied.

RESOLUTION NO. 2008-305

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, ADOPTING A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM, AND APPROVING A GENERAL PLAN AMENDMENT AND LOCAL COASTAL PROGRAM AMENDMENT TO CHANGE THE GENERAL PLAN AND LOCAL COASTAL PROGRAM LAND USE DESIGNATIONS FROM RESIDENTIAL LOW-MEDIUM DENSITY (RLM, 0-4 DU/AC) TO RESIDENTIAL LOW-MEDIUM DENSITY (RLM, 0-4 DU/AC) AND OPEN SPACE (OS) ON A 1.08 ACRE SITE GENERALLY LOCATED ON THE SOUTH SIDE OF ADAMS STREET ALONG THE NORTH SHORE OF THE AGUA HEDIONDA LAGOON BETWEEN HIGHLAND DRIVE AND PARK DRIVE WITHIN THE AGUA HEDIONDA SEGMENT OF THE LOCAL COASTAL PROGRAM AND LOCAL FACILITIES MANAGEMENT ZONE 1.

CASE NAME: ADAMS STREET SUBDIVISION

CASE NO.: GPA 06-08/LCPA 06-08

The City Council of the City of Carlsbad, California, does hereby resolve as follows:


WHEREAS, pursuant to the provisions of the Municipal Code, the Planning Commission did, on October 1, 2008, hold a duly noticed public hearing as prescribed by law to consider the Mitigated Negative Declaration and Mitigation Monitoring and Reporting program, as referenced in Planning Commission Resolution No. 6474, General Plan Amendment GPA 06-08, according to Exhibit "GPA 06-08" attached to Planning Commission Resolution No. 6475 and incorporated herein by reference, and Local Coastal Program Amendment LCPA 06-08, according to Exhibit "LCPA 06-08" attached to Planning Commission Resolution No. 6477 and incorporated herein by reference to change the General Plan and Local Coastal Program Land Use designations from Residential Low-Medium Density (RLM, 0-4 du/ac) to Residential Low-Medium Density (RLM, 0-4 du/ac) and Open Space (OS), and the Planning Commission adopted Planning Commission Resolutions No. 6474, 6475, and 6477 recommending to the City Council that they be approved; and

WHEREAS, the City Council of the City of Carlsbad, on the 18th day of November, 2008, held a duly noticed public hearing to consider said Mitigated Negative Declaration and Mitigation Monitoring and Amendment, and Local Coastal Program Amendment; and

EXHIBIT #1

Resolution of Approval

LCPA #2-08B Adams St. Subdivision

 California Coastal Commission

1 WHEREAS, at said public hearing, upon hearing and considering all testimony
2 and arguments, if any, of all persons desiring to be heard, the City Council considered all factors
3 relating to the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program,
4 General Plan Amendment, and Local Coastal Program Amendment.

5 NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City
6 of Carlsbad as follows:

- 7 1. That the above recitations are true and correct.
- 8 2. That the recommendation of the Planning Commission for the adoption of
9 a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and
10 approval of a General Plan Amendment and Local Coastal Program Amendment are adopted
11 and approved, and that the findings and conditions of the Planning Commission contained in
12 Planning Commission Resolutions No. 6474, 6475, and 6477 on file with the City Clerk and
13 incorporated herein by reference, are the findings and conditions of the City Council.
- 14 3. That the application for a General Plan Amendment to change the Land
15 Use designation from Residential Low-Medium Density (RLM, 0-4 du/ac) to Residential Low-
16 Medium Density (RLM, 0-4 du/ac) and Open Space (OS) on a 1.08 acre site generally located
17 on the south side of Adams Street along the north shore of the Agua Hedionda Lagoon between
18 Highland Drive and Park Drive, as shown in Planning Commission Resolution No. 6475, is
19 hereby accepted, approved in concept, and shall be formally approved with GPA Batch No. 3 of
20 2008.
- 21 4. That the approval of LPCA 06-08 shall not become effective until it is
22 approved by the California Coastal Commission and the California Coastal Commission's
23 approval becomes effective.
- 24 5. This action is final the date this resolution is adopted by the City Council
25 and is subject to the approval of the LPCA 06-08 by the California Coastal Commission. The
26 Provisions of Chapter 1.16 of the Carlsbad Municipal Code, "Time Limits for Judicial Review"
27 shall apply:
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1 "NOTICE TO APPLICANT"

2 The time within which judicial review of this decision must be sought is
3 governed by Code of Civil Procedure, Section 1094.6, which has been
4 made applicable in the City of Carlsbad by Carlsbad Municipal Code
5 Chapter 1.16. Any petition or other paper seeking review must be filed in
6 the appropriate court not later than the nineteenth day following the date
7 on which this decision becomes final; however, if within ten days after the
8 decision becomes final a request for the record of the deposit in an
9 amount sufficient to cover the estimated cost or preparation of such
10 record, the time within which such petition may be filed in court is
11 extended to not later than the thirtieth day following the date on which the
12 record is either personally delivered or mailed to the party, or his attorney
13 of record, if he has one. A written request for the preparation of the
14 record of the proceedings shall be filed with the City Clerk, City of
15 Carlsbad, 1200 Carlsbad Village Drive, Carlsbad, CA. 92008."

16 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
17 Carlsbad on the 18th day of November 2008, by the following vote, to wit:

18 AYES: Council Members Lewis, Hall, Packard and Nygaard.

19 NOES: None.

20 ABSENT: Council Member Kulchin.

21 *Signature on file*

22 *Claude A. Lewis*
23 CLAUDE A. LEWIS, Mayor

24 ATTEST:

25 *Signature on file*

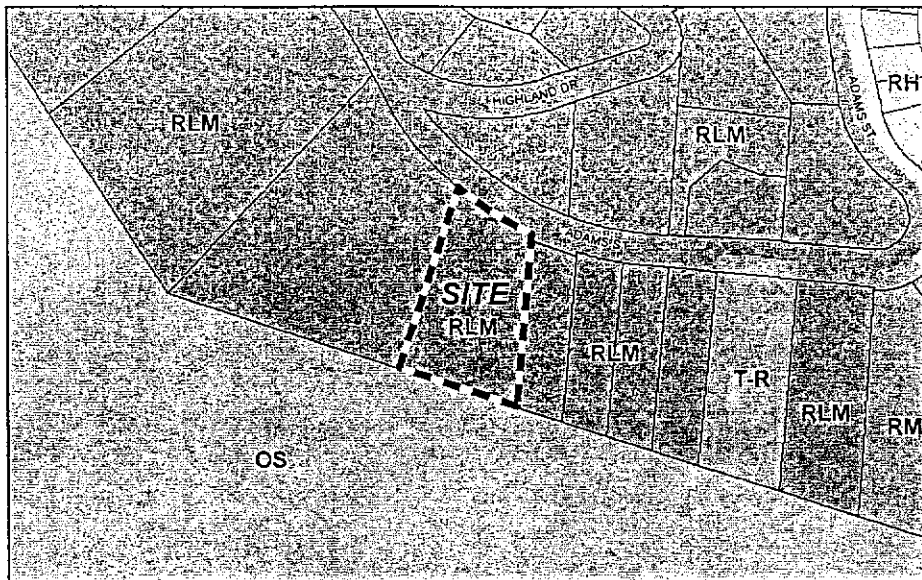
26 *Lorraine M. Wood*
27 LORRAINE M. WOOD, City Clerk

28 (SEAL)

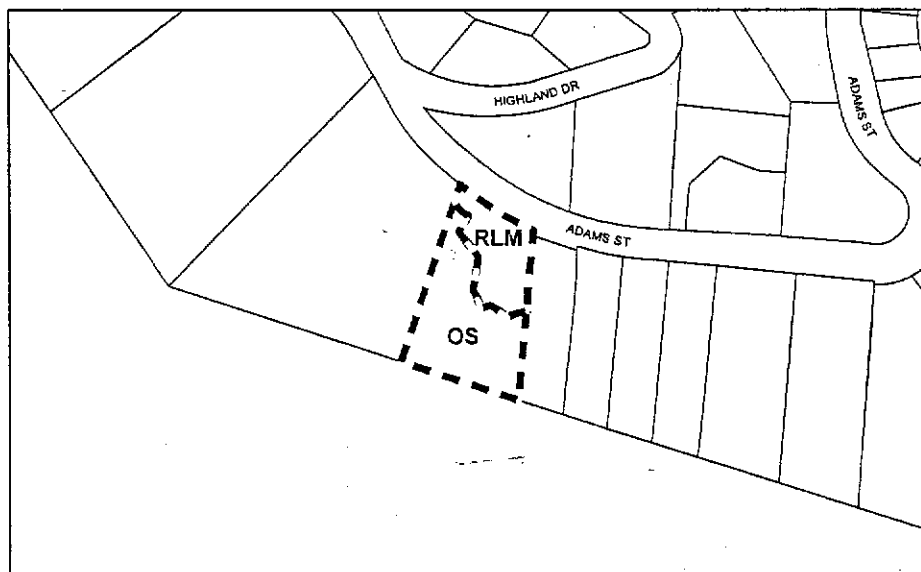


LCPA 06-08 (Land Use)

Exhibit "LCPA 06-08"
October 1, 2008
Adams Street Subdivision




EXISTING



PROPOSED

Related Case File No(s): GPA 06-08/ ZC 06-07/ PUD 05-19/ HDP 05-12/ V 07-03/ HMP 07-04/MS 05-29		
LCPA Land Use Designation Changes		
Property	From:	To:
A. 206-200-01	RLM	RLM/OS

EXHIBIT #2
Map reflecting change in Land Use designation
 LCPA #2-08B Adams St. Subdivision

 California Coastal Commission