

**CALIFORNIA COASTAL COMMISSION**

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November 23, 2011

# W13b

**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 2-10A (Adams St. Subdivision) for Commission Meeting of  
December 7-9, 2011**

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**SYNOPSIS**

The subject LCP amendment was submitted and filed as complete on September 22, 2010. A one-year time extension was granted on December 21, 2010. As such, the last date for Commission action on this item is December 22, 2011. 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. The subject LCP amendment is a resubmittal of a previous LCP amendment proposal. The subject land use redesignation was originally submitted and filed as LCPA 2-08B in December, 2009. Commission staff drafted a staff report recommending denial of the land use change and tentatively scheduled the item for the March, 2010 Commission hearing. However, in response to staff's recommendation, the City withdrew the proposed amendment. The subject LCPA represents the resubmittal of the identical land use redesignation proposed with LCPA 2-08B.

This staff report addresses one of two of the components submitted by the City for Local Coastal Program Amendment No. 2-10 (A & B). LCPA 2-10B (Zoning Clean-Up) is also scheduled for the December, 2011 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 subdivision of the property and 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 lot 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 would 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 would 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 would remain as dedicated open space. Lot 4 is approximately 0.10 acres (4,415 sq. ft.) in size and would 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 would 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 which 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.

While not directly affiliated with the proposed land use change, the construction of the homes, driveway, and public accessway would 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. However, the lands to provide the required mitigation have not been adequately identified or acquired to date. 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 any 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. However, because the proposed amendment modifies the land use designation, the only legal standard of review is the Coastal Act.

### **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. 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.

Therefore, the line drawn separating “developable area” from “open space” is the main component being reviewed by the subject LCP amendment.

The appropriate resolutions and motions begin on Page 6. The findings for denial of the Land Use Plan Amendment as submitted begin on Page 6. The *specific* findings for denial begin on Page 18.

**ADDITIONAL INFORMATION**

Further information on the City of Carlsbad LCP Amendment 2-10A may be obtained from Toni Ross, Coastal Planner, at (619) 767-2370.

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## **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. 2-10A 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 subdivision of the property and 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 crassifloium*), 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 (*Hirsfeldai 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.... 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, to mitigate for the 1:1 creation requirement certified as part of the City's Habitat Management Plan. The City has previously identified the North County Habitat Bank (HCHB) as the location, however, it is unclear if that mitigation site is still available as the contract with the NCHB was only a draft and is now three years old. Moreover, the City intends to purchase existing coastal sage scrub as mitigation for the 1:1 creation component. The purchase of existing habitat cannot substitute for a 1:1 creation requirement. In addition the mitigation for the remaining 1:1 substantial restoration requirement has also not yet been adequately identified or acquired.

#### **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 all 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 uses the maximum development area possible while not 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.

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 customarily 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 must 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 existing 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. Specific Findings for Denial Using The City of Carlsbad's LCP Policies

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 proposed 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 Figure 28 of the HMP as a development area, and, as such, does not have any site 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

protection of existing ESHA and the preservation of a minimum 67% of Coastal sage scrub and 75% of gnatcatcher populations on site, as follows:

### **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.

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 a minimum 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 is 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.

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, containing 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. Excluding the ESHA located with the City's right-of-way, 76% of the subject site is currently vegetated by ESHA (ref. Table #1). While this does not clearly meet the definition for highly constrained properties, the biological report includes that 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 4% (0.043 acres) necessary to deem the site "highly-constrained" and thus development would be limited to 25% of the site. Additionally, the intent of the policy is to restrict lands with significant amounts of ESHA to 25% maximum development envelopes. In this case, the City has designated the maximum percentage of existing coastal sage habitat as possible (33%) for development. Again; and as previously discussed, in review of development on sites containing ESHA, the Commission seeks first to eliminate all impacts, and then, if unavoidable, reduce impacts to the maximum amount practicable. Thus, regardless of the ambiguity associated with defining the site as a "highly constrained" site, the intent of the HMP policies are to avoid impacts to ESHA which, in this particular case means, limit the amount of land designated for residential development; thus, the proposed land use designation of 45% of the lot and 33% of the coastal sage habitat for residential development cannot be found consistent with the Coastal Act or the HMP.

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, with no fuel modification/buffer zone, 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, neither the proposed land use designation nor 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 and 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 also inconsistent with the City's certified LCP.

#### **g. City's Response**

In response to a staff report originally drafted in February, 2010, the City chose to withdraw the land use plan amendment. Since that time, the City has resubmitted the same land use plan amendment, including plans depicting the identical proposed development. While any specific development would still require a coastal development permit to be issued by the Coastal Commission, the project, to date, has not been modified. Instead, the City of Carlsbad has submitted a detailed letter including 10 specific concerns the City had associated with the previous staff report (ref. Exhibit #3). Some of these comments do not require responses; others have been addressed through changes in the staff report; however, some require specific responses, and are detailed below.

The first, and primary concern raised by the City is the question of standard of review. The subject LCP amendment includes a change in the City's land use plan, as such, the standard of review is the Coastal Act. In 2003, the Commission certified the City's Habitat Management Plan (HMP) as consistent with the Coastal Act, and incorporated it into the City's land use plan. The HMP includes policies pertaining to development on parcels containing environmentally sensitive habitat (ESHA), and facilitates development with potential impacts to the habitat. The amendment was found consistent with the Coastal Act, even though it would result in impacts to ESHA, through conflict resolution and because the HMP would allow for concentrations of development and the creation of a large scale habitat preserve that addresses long-term viability and conservation of sensitive species. As such, the policies contained in the HMP are relevant, should be considered applicable for the City's review of the land use modification. However, the Commission's standard of review for land use plan changes remains Chapter 3 of the Coastal Act. All other policies contained within the City's LCP were included in this staff report as guidance.

An additional concern raised by the City is the acreage calculation for the land preserved

on site. Above, the staff report indicates that the line of development versus open space would facilitate the development of 45% of the site. The City has indicated that because of the required buffer, the line of development established with the subject LCP amendment is only 33%. The Commission disagrees with the City's calculation, in that the area of the habitat buffer is never considered part of the preserved area. While the buffer is currently predominantly ESHA, and no development will be permitted within the buffer, the buffer area is not included in the conservation easement, monitoring requirements or endowments as the land contained within the preserve area. Therefore, it would be inaccurate to consider the buffer as part of the preserved land.

The City further commented on the Commission's calculations for impacts by stating that the impacts occurring in the City's right-of-way, associated with the development proposal should not be included as an impact for the parcel. Again, the Commission disagrees with the City's comment. Both the Environmental Impacts Report and Biological report submitted with the subject LCP amendment include the impacts within the Right-of-Way. Further, the intent of the HMP is to analyze impacts to ESHA associated with development. If the City wishes to apply for a coastal development permit to approve the development within the right-of-way as well as mitigate for any impacts to the habitat associated with the development within the right-of-way, the impacts and mitigation associated with the land within the right-of-way could be separated from the subject LCP amendment. However, the City isn't proposing to mitigate for the impacts in a separate review, and, therefore, these impacts should and have been included in the review of the subject LCP amendment.

Finally, the City commented on the Commission's concern for lack of brush management associated with the subject LCP amendment. As previously stated, the land use redesignation will allow for some impacts to ESHA within the portion of the property proposed for residential development. Additionally, the remainder of the site proposed as open space is virtually 100% ESHA. As such, the proposed land use change would not allow for enough space to accommodate any kind of brush management without impacting ESHA. More specifically, the plans included and directly associated with the proposed amendment would not accommodate any brush management zones as sections of the home are located within ten feet of the habitat. At the greatest area, the homes will only be 30 feet from the habitat. The City contends that its LCP allows for the elimination of fire suppression zones if signed off by the Fire Marshall. The Commission recognizes that the City did submit a letter from the Fire Marshall supporting the elimination of any fire management zones. That being said, section 30253 of the Coastal Act, and the adjacency standards of the HMP provide policies for managing flammable vegetation on properties proposed for development in order to protect biological resources, humans, and any improvements on the property. Therefore, the findings pertaining to the lack of adequate brush management, located on Page 24 of this staff report, are still accurate.

#### **h. 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 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, a one-home alternative, depending on the size and scale of the proposed development, would likely 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. Perhaps townhomes, or stacked home could decrease the physical development envelope.

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.

#### **i. 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. 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 trail 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

<b>EXHIBIT #1</b>
<b>Resolution of Approval</b>
LCPA #2-10A Adams St. Subdivision
 California Coastal Commission



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 \_\_\_\_\_  
23 CLAUDE A. LEWIS, Mayor

24 ATTEST:

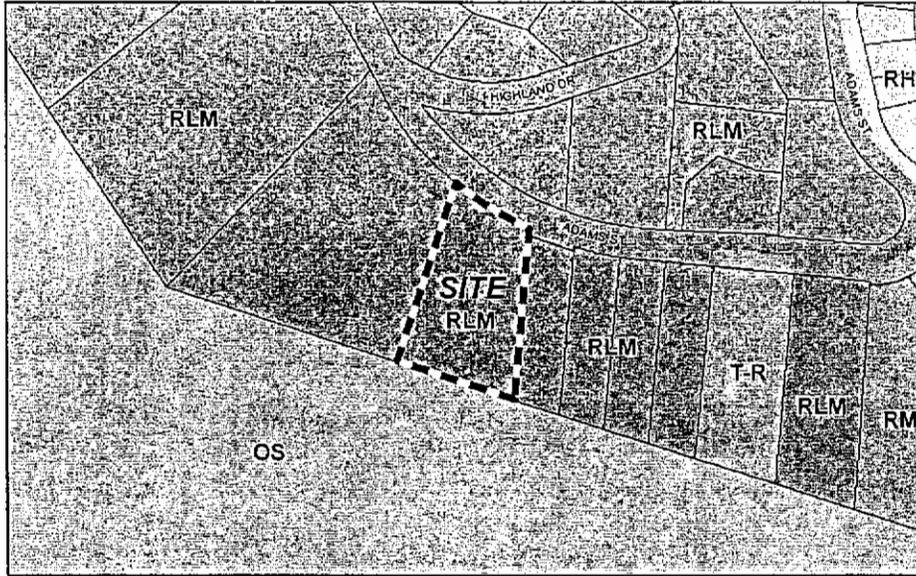
25 *Signature on file*  
26 \_\_\_\_\_  
27 LORRAINE M. WOOD, City Clerk

28 (SEAL)

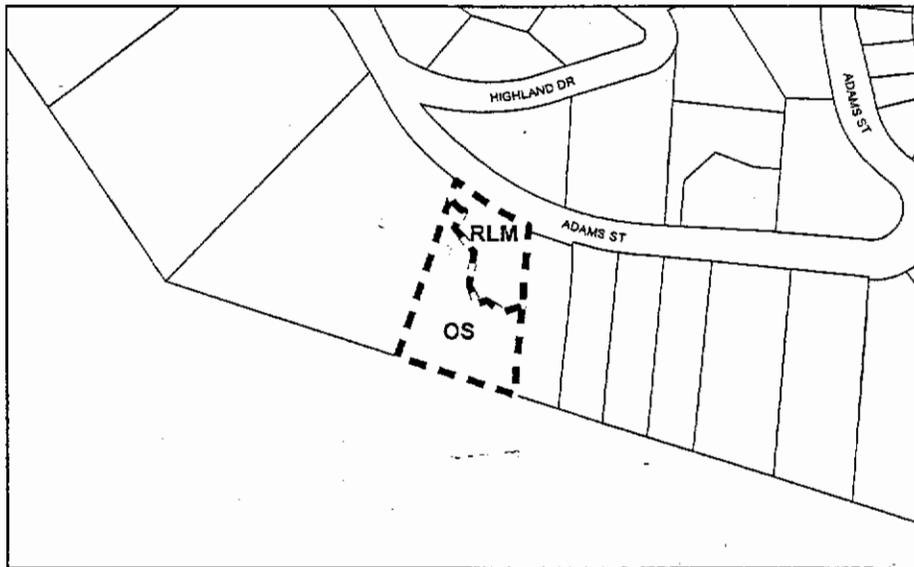


LCPA 06-08 (Land Use)

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 #2-10A Adams St. Subdivision



California Coastal Commission



CITY OF  
**CARLSBAD**

Planning Department

www.carlsbadca.gov

September 22, 2010

**RECEIVED**

SEP 22 2010

California Coastal Commission  
Attn: Ms. Tony Ross, Coastal Planner  
San Diego District, Suite 103  
7575 Metropolitan Drive  
San Diego, CA 92108-4402

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

**SUBJECT: CITY OF CARLSBAD RESPONSE TO COASTAL STAFF RECOMMENDATION OF CITY OF CARLSBAD MAJOR LUP AMENDMENT 2-08B (ADAMS ST. SUBDIVISION) AND ADDENDUM FOR COMMISSION MEETING OF MARCH 10-12, 2010.**

Dear Ms. Ross,

Thank you for withdrawing City of Carlsbad Major LUP Amendment 2-08B (Adams St. Subdivision) and Addendum from the Commission Meeting of March 10-12, 2010 so that we may have time to respond. The City of Carlsbad has thoroughly reviewed Coastal staff's recommendation for denial of LUP Amendment No. 2-08B (Adams St. Subdivision) and are very concerned with Coastal Staff's interpretations of the City of Carlsbad's Habitat Management Plan (HMP) and Planned Development Ordinance as they relate specifically to this project. Furthermore, we are deeply concerned with how the interpretations could further impact other coastal projects that are to be reviewed in the future. Below is a point by point response to the issues that were identified in the Coastal staff report regarding City of Carlsbad Major LUP Amendment 2-08B (Adams St. Subdivision) for the Commission Meeting of March 10-12, 2010. Based on the following clarifications, we ask that you please reverse your recommendation.

**I. Environmentally Sensitive Habitat Areas/Fire Suppression/Steep Slope Encroachment**

**f. Specific Findings for Denial**

**1. Coastal Act Specific Findings for Denial**

**Argument No. 1:**

On Page 17, last paragraph, the report states that,

*"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.*

**City of Carlsbad's Response to Argument No. 1:**

The City of Carlsbad's Habitat Management Plan (LCPA 1-03 Commission in July of 2003 and found to be, on balance,

<b>EXHIBIT #3</b>
<b>Correspondence Received from the City of Carlsbad</b>
<b>LCPA #2-10A Adams St. Subdivision</b>
California Coastal Commission



protective of significant coastal resources. It was found to be consistent with the Coastal Act policies and therefore is the applicable standard of review for this project. Subsequent Coastal approvals, such as LCPA 2-07A (Aura Circle), LCPA 03-04C (Emerald Pointe), and LCPA 1-09A (Seascape), have each illustrated this point as part of their findings for approval. The following excerpt from Coastal Commission's approval of LCPA 03-04C (Emerald Pointe) sums it up best:

*"In its review of the Carlsbad HMP/LCP amendment, the [Coastal] Commission reconciled the conflict between the policies of the Coastal Act that protect environmentally sensitive habitat area (ESHA) and those that require concentrations of development where it will not have significant adverse effects on coastal resources. The [Coastal] Commission found, on balance, that approval [of the HMP] was most protective of significant coastal resources because the HMP would allow for concentrations of development and creation of a habitat preserve that addresses the long-term viability and conservation of sensitive species while allowing some impacts to ESHA to occur. Although implementation of the HMP/LCP will result in some loss of native habitat and listed species throughout the region, in association with loss due to incidental take outside the preserve area, the potential losses to the habitat would be considerably higher without the HMP. Through application of the HMP mitigation requirements, there will be no net loss of ESHA within the coastal zone. Thus, the [Coastal] Commission certified the HMP/LCP amendment as consistent with Section 30240 and 30250 of the Coastal Act."*

As you are aware, the HMP addresses Coastal staff's concern for ESHA under Policy 7-10.a – Highly Constrained Properties, which establishes the threshold for when a project is or is not subject to the ESHA policies of the Coastal Act. HMP Policy 7-10.a states that "if more than 80% of the property by area is covered with ESHA at least 75% of the property shall be conserved." For purposes of discussion, the property in the case of the Adams Street Subdivision project, equates to 1.08 acres in size. Of that, 0.81 acres consists of Coastal Sage Scrub (CSS), 0.01 acres consists of Open Water/Rocky Beach area, and the remaining 0.26 acres consists of Non-Native Grassland (NNG) and Disturbed area. ESHA on the property, therefore consists of 0.82 acres (CSS + Open Water/Rocky Beach = 0.81 + 0.01 = 0.82 acres), or 76% of the site, which is not "more than 80%". Therefore, the project site does not meet the thresholds for a highly constrained property under Policy 7-10.a of the HMP, is not required to conserve 75% of the property, and is not required to limit the types of uses to only those that are specifically dependent on the resources.

**Argument No. 2:**

On Page 18, Paragraphs 2-3, the report states that,

*"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.*

**City of Carlsbad's Response to Argument No. 2:**

To reiterate, the HMP was certified by Coastal Commission in July of 2003 and was found to be, on balance, the alternative that was most protective of significant coastal resources. The HMP addresses highly constrained properties under Policy 7-10.a, which it has been demonstrated in the above section to not be applicable to this project because the property is not covered with more than 80% ESHA (i.e., CSS and Open Water/Rocky Beach). Therefore, Coastal staff's application of ESHA, as it relates to the project's consistency with Section 30240 of the Coastal Act (i.e., *limiting development types to only uses dependent on those resources*) is not applicable to this project since the site is not considered a highly constrained property.

Furthermore, it is very important to note, the report's claim that the "LCP amendment proposes a line separating residential land from open space that will facilitate development of 45% of the lot" is inaccurate. This would be true if you were only considering the Open Space land that is included within the proposed LUP amendment, which is proposing to conserve 0.60 acres in General Plan Designated Open Space on Parcel 3. However, when you also account for the additional deed restricted Open Space lands that are being preserved on Parcel 1 (0.04 acres) and Parcel 2 (0.08 acres), the project on a whole is preserving a total of 0.72 acres in Open Space. This additional 0.12 acres of deed restricted Open Space land, which consists of the required HMP 20 foot wide upland habitat buffer area, will never be developed. This is ensured through Mitigation Measure No. 5 of the Mitigated Negative Declaration, which was prepared on the project and is attached as part of Planning Commission Resolution No. 6474. As a result, the project on a whole is developing only 33% of the site, and not 45% of the site as the report contends.

**Argument No. 3:**

On Page 18, last paragraph, the report states that,

*"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."*

**City of Carlsbad's Response to Argument No. 3:**

As Coastal Staff indicates, the project does not utilize Fire Protection Zones as was approved by the City of Carlsbad Fire Marshal and is illustrated within a letter to the Coastal Commission staff dated April 2, 2009 (please see Attachment No. 1 of this letter). The decision not to modify the existing vegetation to include a 60 foot wide Fire Protection Zone is based on the projects location (i.e., limited risk due to coastal influences, its proximity to the lagoon, no historical occurrence of wild land fires, and the availability of fire resources and quick response times) and the addition of added structural enhancements to prevent any spread of fire. It should be noted that Section F.3 of the City's Landscape Manual entitled Fire Protection Policies and Requirements gives the City, or in this case the Fire Department, the right to modify fire protection standards based on conditions at hand. Your report even states the provision on Page 12, "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.* Through this provision, the Fire Department has the authority, if warranted, to modify fire protection conditions where necessary and when appropriate. It should be further noted that according to the State of California's Fire and Resource Assessment Program (FRAP), the proposed project site is not located within an area identified as a Very High Fire Hazard Severity Zone (VHFHSZ), and thus wild land conditions do not exist that could exacerbate fire hazard conditions. In fact, the project site is identified as a Non-VHFHSZ with the closest VHFHSZ located over 2 miles away. With regards to the Section 30253 of the Coastal Act, the City of Carlsbad Fire Marshal has made a determination that the project as designed minimizes risks to fire hazard. Therefore, the project has been appropriately sited in accordance with Coastal Act Section 30253 to minimize risk to fire. While it is not necessary since the project complies with Section 30253, City staff in strict coordination with the Fire Marshall, is willing to discuss alternative conditions (i.e., a "no brush clearing" type requirement or easement, etc.) that could easily be applied to the project as currently proposed to relieve any Coastal staff concern regarding future modifications to vegetation.

**Argument No. 4:**

On Page 19, last paragraph, the report states that,

*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.*

**City of Carlsbad's Response to Argument No. 4:**

It is important to note that the proposed subdivision does not facilitate development of two homes on one lot. The project instead is proposing the subdivision of a single 1.08 acre lot into four individual parcels, two of which (Parcels 1 and 2) would each be developed with one single-family home (i.e., one single-family home on Parcel 1 and one single-family home on Parcel 2). Parcel 3 would remain in open space, while Parcel 4 would be developed as a private driveway serving both single-family homes. This is similar to larger subdivision tracts in the Coastal Zone where private streets and driveways are provided as a separate lot which are then maintained under common ownership. Through this process, homes can utilize a common driveway rather than individual driveway access, which reduces impacts to the natural landform and also reduces the number of driveway cuts at the street. Furthermore, this design reduces the amount of hardscape materials and also provides for greater opportunities to beautify the streetscape and preserve visual resources, such as this scenic coastal resource area. Other than the orientation of the two residential parcels (i.e., in a clustered pattern to minimize and avoid impacts to the natural landform and habitat), these homes are consistent and visually compatible with the existing single-family lot development pattern of the surrounding neighborhood in that one single-family home would be developed on one parcel. In fact,

consistent with Section 30251 of the Coastal Act, the design of each single-family home utilizes stepped architecture to topographically parallel the natural contours of the site, as well as utilizing retaining walls in the main architectural structures and smaller building footprints to minimize the alteration of the natural landforms. Rather than subdividing the property into two minimum 15,000 square foot lots and recording an open space easement over those portions of each private lot which are deemed environmentally sensitive and prohibited from any development encroachment, the project design instead includes smaller private residential lots and one larger open space lot over the habitat preserve, which consistent with the City's HMP will be rezoned and redesignated to open space in order to prohibit development encroachment. Furthermore, under the proposed project a conservation easement will be recorded over open space Parcel 3 and a conservation entity will be selected to manage the open space in perpetuity. This approach more comprehensively and effectively protects and manages this sensitive habitat.

With respect to the additional constraints of the lot, as illustrated above, the 1.08 acre project site does not meet the thresholds for a highly constrained property under Policy 7-10.a of the HMP, and thus is not required to conserve 75% of the property, and is not subject to the ESHA policies of the Coastal Act, which limits the types of uses to only those that are specifically dependent on the resources. Additionally, the project is not impacting wetlands, and as illustrated in the section above regarding brush management has been appropriately sited in accordance with Coastal Act Section 30253 to minimize risk to fire.

Lastly, steep slopes and those identified as "dual criteria" slopes (i.e., slopes greater than 25% and possessing endangered plant/animal species and/or coastal sage scrub and chaparral plant communities) have been appropriately mapped and the proposed site plan has been specifically designed to minimize impacts to these slope areas to the maximum extent practical. This is consistent with the development of existing properties in the immediate area as well as those directly adjacent parcels located along the shoreline of the lagoon. As illustrated in Attachment No. 16 of the City of Carlsbad Planning Commission Staff Report (October 1, 2008), the project site contains 0.38 acres of "dual criteria" slopes. A color copy of this attachment is provided once again for your review (please see Attachment No. 2 of this letter). Dual criteria slope areas are generally considered undevelopable per the Coastal Resource Protection Overlay Zone (C.M.C. Chapter 21.203), unless the application of which would preclude any reasonable use of the property, in which case an encroachment not to exceed ten percent (10%) of the steep slope areas over twenty-five percent grade may be permitted (C.M.C. Section 21.203.040A1a). As you can see from this exhibit, the majority of impacts to dual criteria slopes are located within the first five feet of the project driveway where it connects with Adams Street, and in small areas along the proposed combination bicycle/pedestrian trail. Impacts to these two specific areas are considered unavoidable based on the development standards of the Agua Hedionda LCP Land Use Plan, which for protection of visual resources requires that structures not exceed the surface elevation of Adams Street (LCP Policy 8.3a), and for shoreline access purposes requires the design and construction of a combination bicycle/pedestrian path along the shoreline of lagoon (LCP Policy 7.3, Exhibits "I" and Exhibit "J"). Of the 0.38 acres identified as dual criteria slopes, impacts to only 0.02 acres (5.2%) occur as result of development. This is 4.8% less than the 10% maximum allowed. Impacts to 5.2% of the dual criteria slopes remain the same regardless of whether you construct one home or two homes on this site, in that the proposed driveway location is designed to be the least impacting, and the location of combination bicycle/pedestrian path is determined by Exhibits "I" and "J" of LCP Policy 7, the latter of which is a specific requirement of the Coastal Commission, which can only be waived by the Coastal Commission.

Although a project site has environmental constraints, it does not preclude it from being developed. It is important to note that the City of Carlsbad HMP, the Agua Hedionda Segment of the Local Coastal Program (LCP), and the Coastal Resources Protection Overlay (C.M.C. Chapter 21.203) has established thresholds for development, which the Coastal Commission has approved. This project does not exceed these thresholds, as illustrated in the Planning Commission Staff Report and this response letter.

I. **Environmentally Sensitive Habitat Areas/Fire Suppression/Steep Slope Encroachment (Continued)**

f. **Specific Findings for Denial**

2. **City of Carlsbad Specific Findings for Denial**

**Argument No. 5:**

On Page 22, first paragraph, the report states that,

*The subject site is located in area identified by the HMP as a development area, and, as such, does not have specific development standards.*

**City of Carlsbad's Response to Argument No. 5:**

This statement regarding the project site being identified in the HMP as a Development Area is correct. The statement emphasizing that there are no specific HMP development standards covering this site is incorrect. It is important to note that the HMP is applicable to the entire City regardless of whether a site is identified as either a Standards Area or a Hardline Preserve Area. The project site's location within the Coastal Zone subjects it to Section D, Policy 7 of the HMP, which begins on Pages D-114 and ends on Page D-121. Policy 7, entitled *Additional Conservation Standards To Be Applied to Properties in the Coastal Zone*, is the applicable standard established for the development of this site. It is also very important to note, that neither this parcel, nor any of the adjacent parcels to the west, which are identified as Standards Area, have any additional Specific Habitat Protection Standards (Policy 7-14, Page D-118) established over them. Lastly, it is important to note that the Adams Street Subdivision did apply the standards of the HMP regardless of the fact that the project is not identified as a Standards Area.

**Argument No. 6:**

On Pg. 22, second to last paragraph, the report states that,

*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.*

**City of Carlsbad's Response to Argument No. 6:**

Policy 7-2 of the HMP (Pg. D-114) states that Coastal Sage Scrub (CSS) is a resource of particular importance to the ecosystem of the Coastal Zone due in part to the presence of the Coastal California gnatcatcher and other species, and that properties containing CSS and which are located in the Coastal Zone shall conserve a minimum of 67% of the CSS and also 75% of the gnatcatchers onsite, with conservation of the gnatcatcher determined in consultation with the wildlife agencies.

With respect to CSS, this project is preserving the minimum 67% (0.57 acres) of the CSS onsite within proposed Open Space Parcel 3 (0.60 acres). The remaining areas onsite and also within proposed Open Space Parcel 3 consisting of Non-Native Grassland are being upgraded and re-vegetated with CSS to enhance the quality of habitat remaining onsite. Additionally, it is very important to note that through the development of this project and the associated mitigation, an added benefit of an additional 0.54 acres of CSS will be preserved within the Coastal Zone through offsite creation or acquisition, which either didn't exist beforehand or at least wasn't previously preserved.

With respect to 75% preservation of gnatcatchers onsite, this project will be preserving 100% of the gnatcatchers through Mitigation Measure No. 6 of the approved Mitigated Negative Declaration (please see City of Carlsbad Planning Commission Resolution No. 6474). Mitigation Measure No. 6 requires that no clearing, grubbing, grading or other construction activities occur onsite during the avian nesting season, unless a qualified biologist confirms, through a documented survey immediately prior to clearing activities, that no nesting gnatcatchers or other sensitive bird species will be impacted. Through this mitigation measure, no gnatcatcher or any other sensitive bird species for that matter will be physically taken by development. The combination of the 0.60 acres being preserved in Open Space on Parcel 3, along with the additional 0.12 acres being deed restricted in Open Space on Parcels 1 and 2, and also the remaining areas of high quality CSS habitat on the properties directly adjacent to the site, which are identified as Standards Area in the HMP and subject to future preservation requirements associated with any site development, will provide ample open space and habitat for the gnatcatchers to continue to nest, forage and thrive.

It should also be noted that the California Department of Fish and Game (DFG) and the United States Fish and Wildlife Service (USFWS), together known herein as the "Wildlife Agencies," were consulted as part of the public review process, as was the Coastal Commission. The draft environmental document was received by the State Clearinghouse on February 25, 2008, registered under SCH#2008021120, and then circulated for a 30 day state agency public review with the review period ending on March 25, 2008. In a letter dated March 26, 2008, the State Clearinghouse notified city staff that no state agencies had submitted any comments on the draft environmental document and that through this process city staff had complied with the State Clearinghouse review process for draft environmental documents pursuant to the California Environmental Quality Act. In addition to sending the draft environmental document to the State Clearinghouse for review, the Wildlife Agencies and the Coastal Commission were also each sent their own individual copies of the draft environmental documents along with the associated technical reports necessary to adequately review the project. A 30 day review period was provided ending on March 27, 2008. An extension of time was granted to the USFWS upon request, and a new deadline for review was established ending on April 11, 2008. The only comment that was received during the review period came from the USFWS discussing the proposed trail alignment. No other comments pertaining to any additional measures with respect to the preservation of gnatcatchers were received from the Wildlife Agencies, nor were any received by the Coastal Commission. Based on these facts, staff not only consulted with the Wildlife Agencies in accordance with State law, but also consulted with the Coastal Commission from which no comments were ever received. Based on these facts, staff has consulted with the Wildlife Agencies and has addressed the preservation of CSS and gnatcatchers appropriately.

**Argument No. 7:**

On Pg 22, last paragraph, the report states that,

*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.*

**City of Carlsbad's Response to Argument No. 7:**

The project's Biology Report identifies impacts to coastal California Gnatcatcher occupied Coastal Sage Scrub (CSS) in two areas, *permanent* impacts (0.26 acres) and *temporary* impacts (0.01 acres). While the impacts have been separated into two separate and distinct categories, it should be noted that the project Biology Report, the Planning Commission Staff Report, and the adopted Mitigated Negative Declaration, and Mitigation Monitoring and Reporting Program, consistently account for a permanent 0.27-acre (0.26 + 0.01 = 0.27) impact for occupied CSS. The extent of the temporary 0.01-acre impact to occupied CSS is identified in the Biology Report with a special type of hatching. This area of impact is approximately 6 ft. wide by approximately 80 ft. long (0.01 acres) and is located along the southwesterly edge of the property. The impact to this area is necessary as a result of the project's need to connect to an existing City sewer line running across the project site just west of the proposed residences. The purpose of identifying the 0.01-acre impact as *temporary* was simply for the purpose of recognition and identification. Please note that in addition to the applicant mitigating for a loss of 0.01 acres of occupied CSS through off-site creation of at least 0.01 acres (1:1 ratio) and an additional 0.01 acres (1:1 ratio) of off-site creation, acquisition/preservation or substantial restoration and/or enhancement, they will also be replanting the 0.01-acre *temporary* impact area with CSS, as well as replanting a much larger area of existing Non-Native Grassland also with CSS. While the biology report differentiates impacts as either permanent or temporary, the mitigation has consistently been applied as a permanent impact.

Furthermore, please note that the access for the construction of the 8 foot wide combination pedestrian/bicycle path is intended to occur through the impact area of the proposed sewer connection that is proposed along the property's eastern boundary. It is a logical that while this area is being impacted for the construction of underground utilities the same path of travel would be used to excavate the proposed pedestrian/bicycle path. It has always been planned that the pedestrian/bicycle path would be constructed by hand as has been the case for many other City trail projects where heavy equipment cannot access certain areas due to sensitive habitat or steep slopes and terrain.

**Argument No. 8:**

On Page 23, Paragraph No. 2, the report states that,

*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.*

**City of Carlsbad's Response to Argument No. 8:**

As stated in the first sections of this letter, the HMP addresses ESHA under Policy 7-10.a, entitled *Highly Constrained Properties*. This policy establishes a threshold for when a property is or is not subject to Section 30240 of the Coastal Act, which strictly limits uses to only those that are specifically dependent on the resources. To reiterate this point, the 1.08 acre property does not exceed the thresholds for a highly constrained property under Policy 7-10.a, and thus is not required to conserve 75% of the property, and furthermore is not required to limit the types of uses to only those uses that are specifically dependent on the resources.

The calculation that is listed within this section of the Coastal report, where it is stated that "78.7% of the subject site is currently vegetated by ESHA," is including the offsite improvement area (0.7 acres) for the project to bolster the claim that the property contains almost 80% ESHA. For purposes of discussion and clarification, the property in the case of this project, equates to 1.08 acres in size. Of that, 0.81 acres consists of Coastal Sage Scrub (CSS), 0.01 acres consists of Open Water/Rocky Beach area, and the remaining 0.26 acres consists of Non-Native Grassland (NNG) and Disturbed area. ESHA, on the property, consists of 0.82 acres (CSS + Open Water/Rocky Beach = 0.81 + 0.01 = 0.82 acres), or 76% of the property (0.82 acres ÷ 1.08 acres = 0.759 = 0.76 = 76%), which we have demonstrated does not equate to "more than 80%". Nonetheless, including the offsite improvement area, it should also be noted that 78.7% also does not equate to "more than 80%".

The Coastal report further states that "*the definition for highly constrained sites included in the HMP, is limited to sites containing ESHA on 80% or more of the property.*" This again is incorrectly stated to bolster the claim that the property contains almost 80% ESHA. However, it is very important to note that HMP Policy 7-10.a., actually states that "If more than 80% of the property by area is covered with ESHA at least 75% of the property shall be conserved." There is significant difference in the meaning of "80% or more" versus "more than 80%". This project does not exceed this threshold.

Lastly, the report presupposes that if the non-native grassland habitat and the disturbed areas of the site were left unaltered, that these areas may re-vegetate with critical habitat types necessary to meet the threshold for a highly constrained site. It further suggests that the City of Carlsbad may have acted negligently in not taking a more conservative approach in its identification of the site as a highly constrained site. Based on the physicality of the site as it exists, there is no evidence to suggest that the site meets the definition of a highly constrained site (please see discussions above). When it comes to making decisions and/or recommendations on a project, City staff does not have the liberty of conjecture, presupposition, or assumption. Instead, staff is required to collect the facts, weigh the evidence, and apply the requirements as equitably as possible; and as demonstrated throughout this letter, the habitat types identified on the property do not meet, nor do they exceed, the "more than 80%" threshold of significance that is necessary to classify a property as a highly constrained site.

**Argument No. 9:**

On Page 23, last paragraph, the report states that,

*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.*

**City of Carlsbad's Response to Argument No. 9:**

Please see City of Carlsbad's response to Argument No. 3 above. No additional brush management is necessary. Therefore, there will be no additional impacts to sensitive habitat.

**Argument No. 10:**

On Page 24, beginning with the first paragraph, the report states that,

*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 page goes on to cite in Paragraph No. 4 that,

*The City failed to include in its analysis 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.*

**City of Carlsbad's Response to Argument No. 10:**

On January 8, 2009, the Coastal Commission approved City of Carlsbad Major Amendment No. 1-07B (Planned Development Regulations) recognizing that it would "affect all segments of the City's certified LCP, as well as the Habitat Management Plan (HMP), as Planned Developments are often proposed on large vacant parcels within the HMP area." Furthermore, it is especially important to note for purposes of discussion, that on Pg. 2 of the Coastal Commission staff report, it was recognized that "the existing [Planned Development] regulations, taken together, prevent some projects from reaching the required minimum densities," and that "the amendment request would allow lots to reach the allowable densities on constrained/small lots, and on infill projects."

For background, it is important to understand that the intent and purpose of the Planned Development Ordinance, as illustrated in Section 21.45.010A1-4 of the approved regulations, is to recognize the need for a diversity of housing product types; provide a method for clustered property development that recognizes that the impacts of environmentally and topographically constrained land preclude the full development of a site as a standard single-family subdivision; establish a process to approve one family dwellings on individual lots of less than 7,500 square feet in size or as otherwise allowed by the underlying zone; and to encourage and allow more creative and imaginative design by including relief from compliance with standard residential zoning regulations, provided that amenities and features not normally required of standard residential developments are incorporated. These types of project are not new to the Coastal Commission, in fact as recently as May 13, 2010 the Commission approved the Seascape project (City of Carlsbad LCP Amendment No. 1-09A), which included a Planned Development Permit (PUD 05-14) for small-lot development (minimum 5,000 sq. ft. lot size) and a private street. Prior to that action, the Commission approved many other clustered type subdivisions within the Aviara Master Plan (MP 177) area, which utilized the Planned Development regulations to create clustered developments with reduced lot sizes and private streets.

The Adams Street Subdivision project is exactly what the Planned Development regulations were designed for, and is exactly what the Coastal Commission supported in their most recent approval of the Planned Development regulations. To state that the project is in conflict with the City's Certified Local Coastal Program to provide 15,000 square foot minimum lot sizes, is counter to Coastal Staff's recommendation in Carlsbad Major Amendment No. 1-07B. As illustrated above and throughout the Carlsbad Major Amendment No. 1-07B staff report, it is clear that Coastal staff understands the intent and purpose of the Planned Development regulations and made sure that the Coastal Commission understood the intent of the regulations as well in making their recommendation. The subject site is both zoned R-1 and contains sensitive biological resources as identified in the HMP. Therefore, the application of the Planned Development regulations is warranted to meet the City General Plan densities for the site.

**I. Environmentally Sensitive Habitat Areas/Fire Suppression/Steep Slope Encroachment (Continued)**

**g. Alternatives (Pg. 25)**

**Alternative No 1:**

On Page 25, first paragraph under *Alternatives*, the report states that,

*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.*

**City of Carlsbad's Response to Alternative No. 1:**

As discussed throughout this letter, there are thresholds for developing constrained properties that have been established in collaboration with the Coastal Commission, and as demonstrated in the responses above, this project does not exceed those thresholds, is not inconsistent with the Coastal Act, and does not create what is described as substandard lots. The only issue worth noting is the inconsistency in the placement of the LCP required combination bicycle/pedestrian trail being located within the boundaries of the HMP/LCP required 100 foot wetland buffer, which we've noted is created through the requirement of both the City's HMP and the LCP. As discussed above, the condition to develop the trail can be removed as part of the Coastal Commission's findings for approval of the CDP. However, without this action, the issue still remains under either the one-home alternative or the existing two-home proposal.

With respect to impacts to CSS and steep slopes, the one-home alternative still requires the same driveway design and orientation to adequately traverse the slope, which creates a large majority of the impacts to both CSS and steep slopes. Furthermore, the cost of improvements for the project, and the size of the endowment that is necessary to preserve the open space habitat outweigh the cost of developing the one-home alternative let alone Coastal Staff's suggestion of a smaller footprint designed single-family home. To justify the cost of development, the one-home alternative would end up resulting in a similar sized development footprint when compared to the current two-home proposal. Provided that the established thresholds, development standards, and design criteria are not exceeded, City staff would be compelled to recommend approval of such a development. That being said, the two-home proposal is an economically viable and superior project, which not only proposes a density that is consistent with both the City's General Plan and Growth Management Ordinance, but also insures the lifelong protection of 0.60 acres of open space onsite within Parcel 3 and 0.54 acres

offsite within the Coastal Zone, plus an additional 0.12 acres onsite within Parcels 1 and 2 through an open space easement. Furthermore, the existing proposal provides for a smaller footprint, more efficiently designed homes in a clustered pattern, which is more consistent with future development trends for residential housing.

**Alternative No. 2:**

On Page 25, second paragraph under *Alternatives*, the report states that,

*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.*

**City of Carlsbad's Response to Alternative No. 2:**

It is confusing when in one instance Coastal Staff would identify the existing two-home development proposal as creating substandard designed lots that are inconsistent with the surrounding development pattern of the neighborhood, and then in the next instance suggest as an alternative a project consisting of smaller development envelopes or more concentrated clustering of the homes to eliminate/minimize impacts to ESHA. To reiterate, the project site does not exceed the thresholds for a highly constrained property under Policy 7-10.a of the HMP and thus is not required to limit the types of uses to only those that are specifically dependent on the resources in accordance with Section 30240 of the Coastal Act. As such, reducing the footprints even smaller in size than what is already proposed (i.e., 1,294 sq. ft. and 1,393 sq. ft.) is unnecessary and unwarranted, especially when existing footprints of newer homes in the area are at least double the size proposed. In addition, as previous responses have demonstrated, the project is consistent with the applicable Coastal Act Sections 30230, 30240, 30251, and 30253. Therefore, City staff strongly believes that the existing two-home proposal has been appropriately sited, is a superior design, and provides the best balance between development and nature.

**II. Visual Resources**

**c. Specific Findings for Denial (Pg 28)**

On Page 28, First paragraph, the report states that,

*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.*

**City of Carlsbad's Response to Visual Resources - Specific Findings for Denial (Pg. 28):**

As illustrated in the above responses, the project site does not exceed the thresholds for a highly constrained property under Policy 7-10.a of the HMP, and thus is not required to conserve 75% of the property, and is not required to limit the types of uses to only those that are specifically dependent on the resources in accordance with Section 30240 of the Coastal Act. Thus, it is fair to say that Section 30240 of the Coastal Act is not applicable in the case of this project because the Coastal Commission approved City of Carlsbad HMP takes precedence.

Furthermore, the matter of architectural color, as it specifically relates to the proposed homes blending in with the natural environment, is a matter easily addressed as a discretionary action taken by the Coastal Commission through a condition of approval made part of the Coastal Development Permit. Also, on the matter of blending in with the natural environment, it is important to be aware that all of the proposed retaining walls on the approved set of plans (please see Planning Commission Exhibit B), with exception to the walls identified as having a stone veneer, have already been required to be constructed of an earth tone color split-faced type CMU to blend in with the natural environment. It was our intent that the walls blend in and that the most visible wall to the lagoon and Interstate-5, which is the one that forms the rear yard of Parcel 2, is covered with a stone veneer of a color and type to blend in as much as possible with the surrounding natural environment. The other walls on the upper portions of the site will either be obscured by natural vegetation, landscaping, and or the two proposed residential structures.

**III. Public Access**

**c. Specific Findings for Denial (Pg. 30-31)**

On Page 30, the report states that,

*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.*

**City of Carlsbad's Response to Public Access - Specific Findings for Denial (Pg. 30-31):**

It's important to note that any project that is proposed on this site (or the vacant parcels to the west for that matter), regardless of whether it is one home or multiple homes, will be presented with the same issue regarding trail alignment in that a 100 foot wetland buffer area is required to extend from the edge of the wetland (i.e., open water/rocky beach) and across the face of the entire parcel. We agree with Coastal staff's assertions that the approval of a trail alignment at this time may be premature, or at least impractical given the current environmental setting with respect to preservation of habitat and sensitive species. As part of the City's staff report for the project, we identified this conflict and balanced it in a manner that we found to be the most logical.

The proposed trail alignment has been designed and sited to be the least impactful, and any impacts that occur as a result have been appropriately accounted for and mitigated. However, that being said, we do not disagree that it still conflicts with HMP policy to provide a clear and free 100 foot wide buffer area between the edge of development and the edge of the wetland habitat area (i.e., open water/rocky beach). As such, the California Coastal Act articulates land use priorities for the Coastal Zone, and the highest priority is placed on the preservation and protection of natural resources. Land Use/Development priorities are defined by the Coastal Act in the following order: 1) preservation of natural resources and environmentally sensitive areas; 2) coastal dependant development (i.e., development requiring a site adjacent to the ocean to

function); 3) public recreational uses; 4) visitor-serving commercial recreation; and 5) private residential, industrial, and commercial development.

As illustrated in the project Staff Report and also our response to USFWS comments, relocating the trail within the first 15 feet of the 100 foot wetland buffer is impractical and would result increased impacts to habitat. Since the Coastal Act places the highest priorities on the preservation of natural resources and environmentally sensitive areas, staff proposes that the trail be eliminated altogether. Coastal Commission (CCC) has the permit authority within the Agua Hedionda Segment of the LCP, and ultimately the decision making power to rule on such an issue.

**Summary:**

In summary, we would like to remind Coastal Staff that the City of Carlsbad HMP was approved in collaboration with the Coastal Commission, of which it was found to be, on balance, the alternative most protective of significant coastal resources. These policies have been integrated into the City's LCP. This project meets the requirements of the HMP and does not exceed any thresholds, which would invalidate its approval and/or subject it to more rigorous Coastal Act challenges. Furthermore, we would also like to remind Coastal Staff that the City of Carlsbad Planned Development regulations were also approved in collaboration with the Coastal Commission, of which it was recognized that the Planned Development regulations would allow lots to reach the allowable densities on constrained small lots and infill projects. In light of this letter and any clarification that may have been provided within, we request that you please reconsider your course of action, and instead recommend approval of the proposed LCP Amendment, and any subsequent Coastal Development Permit action that is to follow.

Included with this letter is the resubmittal of LCPA 06-08. If you have any questions or wish to meet with us on the matter, please do not hesitate to contact me by telephone at (760) 602-4643 or email at [jason.goff@carlsbadca.gov](mailto:jason.goff@carlsbadca.gov).

Sincerely,



**JASON GOFF**  
Associate Planner

- Attachments:
1. Fire Department letter to Coastal Commission dated April 2, 2009 (copy).
  2. Dual Criteria Slope Analysis dated May 9, 2007 (color copy).
  3. LCPA 06-08 resubmittal (three (3) copies).

JG:sm

c: Dr. Ben & Eunice Medina, Dr. David Graham, PO Box 1766, Bonita, CA 91908  
Mark Wunch, 2303 Galveston Street, San Diego, CA 92110  
McCabe & Company, Attn: Susan McCabe, 122 Voyage Mall, Marina Del Ray, CA 90292  
US Fish & Wildlife Service, Attn: Ms. Janet Stuckrath, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011  
California Department of Fish & Game, Attn: Libby Lucas, 4949 Viewridge Avenue, San Diego, CA 92123  
Gary Barberio, Community & Economic Development Director  
Don Neu, City Planner  
Chris DeCerbo, Principal Planner  
File Copy  
Data Entry



# City of Carlsbad

## Fire Department

Office of Fire Prevention Division

April 2, 2009

California Coastal Commission  
San Diego Coast District Office  
Sherilyn Sarb, Deputy Director  
Deborah Lee, District Manager  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

RE: Comments on Mitigated Negative Declaration for Adams Street Subdivision (GPA 06-08 / ZC 06-07 / LCPA 06-) in the City of Carlsbad, San Diego County, California.

To Whom It May Concern,

On behalf of the Carlsbad Fire Department I provide this letter to you regarding the Adams Street Subdivision project within the City of Carlsbad. As you are keenly aware this project is a 'Single-family' Residential project located adjacent to the North shore of the Agua Hedionda Lagoon in the City of Carlsbad, Ca.

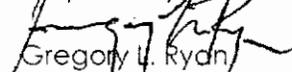
Our review of this proposed project has presented many challenges, both to the applicant and to those responsible approving agencies. After extensive review and consultation amongst our staff, it is my conclusion and opinion that there is minimal risk to the proposed structure from the effects of a vegetation fire occurring outside of the structure. Aside from the location of the proposed structure on this slope, the Carlsbad Fire Department has required the applicant to take exhaustive measures to design and construct an otherwise fire rated/resistive structure.

Furthermore, it is our opinion that there is a lesser risk to the environment if a fire were to occur within this structure largely because of our requirement to protect the occupants first and the structure second.

In closing, the Carlsbad Fire Department shall not seek a vegetation management or modifications that would otherwise change the look and balance of the naturally occurring plants and trees along the shore of the lagoon.

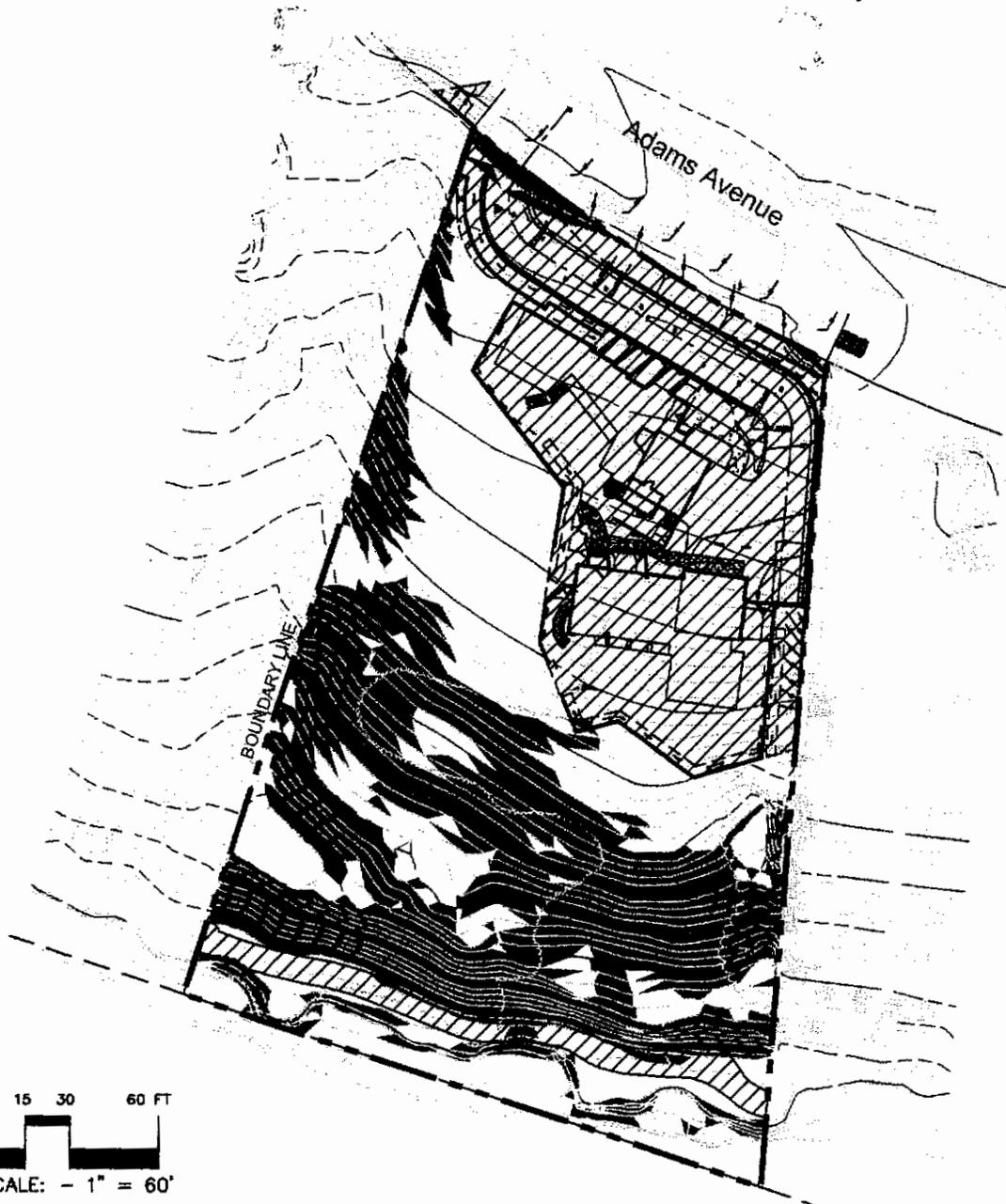
Should you have further questions regarding this matter, feel free to contact me directly at 760-602-4663.

Respectfully,

  
Gregory U. Ryan  
Deputy Fire Marshal

Cc: James Weigand, Fire Marshal  
Jason Goff, Associate Planner





Legend

- >25% Dual Criteria Slope with Habitat (Coastal Sage Scrub)
- Impacted by Proposed Development

Analysis Table	Acres	Percentage
Total Acreage	1.08	-----
Total area of >25% slope with CSS (Dual Criteria)	0.38	-----
Total Area of Dual Criteria impacted by proposed development	0.02	5.2%

SOURCE: O'Day Consultants; Constraints Slope Analysis Map (September, 2005)  
 Planning Systems Biology Survey (March 2006)