

CALIFORNIA COASTAL COMMISSION

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February 2, 2007

TO: Commissioners and Interested Persons

FROM: Sherilyn Sarb, Deputy Director, South Coast District
Teresa Henry, Manager, South Coast District
Karl Schwing, Supervisor, Regulation & Planning, Orange County Area
Meg Vaughn, Coastal Program Analyst

SUBJECT: Major Amendment Request No. 1-06 to the City of Huntington Beach Certified Local Coastal Program (For Public Hearing and Commission Action at the February 14-16, 2007 meeting in San Diego). Amendment relates to the Shea Homes-Parkside Estates development proposal.

SUMMARY OF LCP AMENDMENT REQUEST NO. 1-06

Request by the City of Huntington Beach to amend both the Land Use Plan (LUP) and the Implementation Program (IP) portions of the Local Coastal Program (LCP). The proposed Local Coastal Program (LCP) amendment is a project-specific amendment designed to make possible a low density residential development on a vacant, approximately 50-acre site comprising two legal lots, most of which is currently in agricultural production. Of the total project area, approximately 45 acres have long been located within the City of Huntington Beach. The remaining 5 acres were, until 2004, located within unincorporated County of Orange jurisdiction, within the Bolsa Chica LCP area. However, with the recent annexation, the entire site is within the City of Huntington Beach. Of the 45 acre portion of the site, approximately 40 acres were deferred certification at the time the City's overall Local Coastal Program was certified and remains uncertified today. This LCP amendment would incorporate that 40 acres and the newly annexed area into the City's existing LCP and establish land use and zoning designations for those areas. The remaining five acre portion of the 45 acre area was certified at the time the City's overall LCP was certified as Open Space – Park (OS-P). The 40 acre area was originally deferred certification due in part to wetland issues.

The City's current amendment requests designation of approximately 38.5 acres as RL-7 (Low Density Residential – maximum 7 units per acre), approximately 8.2 acres as OS-P (Open Space – Park), and approximately 3.3 acres as OS-C (Open Space – Conservation). As proposed, the corresponding zoning would be: approximately 38.5 acres RL-FP2-CA (Low Density Residential-floodplain Overlay-Coastal Zone); 8.2 acres would be zoned OS-PR-CZ (Open Space-Parks and Recreation-Coastal Zone Overlay; and, 3.3 acres would be zoned CC-FP2-CZ (Coastal Conservation-Floodplain Overlay-Coastal Zone Overlay).

SUMMARY OF STAFF RECOMMENDATION:

The motions to accomplish the staff recommendation are found on pages 5 – 7.

As proposed the amendment would allow residential development of up to 7 units per acre, on 38.5 acres of the site. In addition, active park uses would be allowed within the proposed Open Space Parks designation. Wetland areas and a eucalyptus grove Environmentally Sensitive Habitat Area (ESHA) that supports raptors are present at the site. Portions of the areas proposed to be designated and zoned for residential and park uses are within or adjacent to the wetlands and ESHA at the site. Thus the proposed residential and park land use designations and zoning would not be consistent with the requirements of Coastal Act Section 30233 regarding wetland protection or with Section 30240 regarding ESHA protection. The proposed land uses and zoning further preclude an appropriate buffer to allow continued raptor use of the ESHA as required by Section 30240 of the Coastal Act. Therefore, staff is recommending **DENIAL** of the Land Use Plan Amendment as submitted and approval of the amendment if modified to include revised footprints for the proposed land use designations that would be consistent with Section 30233 of the Coastal Act regarding development in wetlands and with Section 30240 regarding development in and adjacent to ESHA. In addition, suggested modifications regarding water quality, public access, visual resources, hazards and archaeological resources are recommended which would make the proposed amendment consistent with Sections 30230 and 30231 of the Coastal Act regarding water quality, and with Sections 30210 and 30252 of the Coastal Act regarding public access, with Section 30244 of the Coastal Act regarding archaeological resources, Section 30253 of the Coastal Act regarding minimizing hazards, and Section 30251 regarding visual resources.

As submitted, the IP portion of the amendment is inconsistent with and inadequate to carry out the City's certified Land Use Plan, as staff is suggesting it would have to be amended. Thus, revised footprints for the proposed zoning are also recommended to bring the proposed IP amendment into conformance with the LUP policies regarding wetland and ESHA protection. Therefore staff is recommending **DENIAL** of the Implementation Plan Amendment as submitted, and approval if modified as provided below.

The major areas of disagreement are:

Wetland:

The property owner disagrees with staff's assertion that there are additional wetlands on site, beyond that within the area already proposed to be designated Conservation (the "County" Parcel or CP wetland area). Acreage of the CP wetland is 0.45 acres. Staff believes that there are two additional areas of wetland. The two additional wetland areas are known as the Wintersburg Pond or WP (0.9515 acres), which is located approximately midway along the site's southern boundary, adjacent to the East Garden Grove Wintersburg Flood Control Channel; and the Agricultural Pond or AP, which is located near the base of the bluff in the northwest area of the subject site (0.614 acres). Most problematic of the two disputed areas for the property owner is the WP area. The WP is located in an area the property owner proposes to develop with single family residences. In the area of the AP, the property owner proposes to develop an active park and residential support such as roads.

Because the site has historically been farmed (for more than 50 years), determining the quantity and location of wetlands present on site is difficult. After extremely extensive review, staff has determined that the AP and WP are “wet enough, long enough to support wetland vegetation.” Usually when an area meets this criteria, the site also supports either wetland vegetation or wetland soils. However, because the site is routinely disced and otherwise disturbed by farming activities, neither of these features have been able to conclusively establish. Nevertheless, the Commission’s standard has been met, and the Coastal Act clearly prohibits development, other than the eight enumerated uses, in wetland areas. Once agricultural activity ceases within the wetlands and they are preserved and appropriately managed, the habitat value of the WP and AP will be significantly improved.

ESHA

The property owner disagrees with staff’s assertion that there is additional ESHA on site beyond that within the area already proposed to be designated Conservation (Eucalyptus Grove ESHA in the southwestern part of the property). Similar habitat exists in the northwestern portion of the site, separated from the previously recognized ESHA by about 500 feet. Staff believes this area constitutes ESHA as well, in that it provides the same valuable habitat functions as does the previously recognized ESHA in the southwestern part of the site.

Although the trees at the base of the mesa at the northern boundary of the Shea Parkside property have not previously been considered by the Commission, they provide the same type of ecological services as do the rest of the trees bordering the mesa. The following species have been observed in the north grove: white-tailed kite, merlin, red-shouldered hawk, turkey vulture, great horned owl, barn owl, peregrine falcon, Cooper’s hawk, red-tailed hawk, and osprey. Of these, red-tailed hawk, Cooper’s hawk, osprey, barn owl, and turkey vulture have recently been observed perching or roosting and Cooper’s hawks, a California Species of Special Concern, were observed to nest there in 2005 and 2006. In addition, paired great horned owls have been regularly observed within the northern grove over the last 20 years. The presence of an old nest suggests that the grove has probably supported nesting birds of prey in previous years. Like the rest of the Eucalyptus groves, these trees provide opportunities to raptors for perching, roosting and nesting and for hunting and safe movement corridors. In recognition of the important ecosystem functions provided by Eucalyptus trees in the north grove, and in conjunction with the fact that the trees could be easily disturbed, degraded, or entirely destroyed by development, the Commission finds that they meet the definition of ESHA under the Coastal Act.

The property owner disagrees with staff’s assessment of this area as ESHA. Furthermore, the property owner disputes the amount of buffer area necessary to protect the ESHA. Staff feels that a 100 meter (328 feet) buffer is necessary. The property owner believes a 100 foot buffer would be adequate.

Natural Treatment System

Staff believes that non-mechanical water quality BMPs, such as natural treatment systems, must be provided on site in conjunction with any development of the site. Site development, including new impervious areas, would result in runoff leaving the site where none currently does which will create new adverse water quality impacts. Measures to minimize adverse impacts resulting from creation of impervious surfaces include retaining all dry weather flow on site and treating runoff from the 85th percentile storm event with at least a 24 hour detention period. Typically the best way to achieve both of these goals is with vegetative or natural systems.

The site provides an optimum opportunity to a natural treatment system because it is a large, undeveloped site, comprised of two large lots, and is unconstrained by topography. Furthermore, no drainage currently leaves the site. Any development of the site will create new adverse impacts on the water quality of the flood control channel, and, more significantly, downstream water bodies. Water bodies downstream of the site include Inner and Outer Bolsa Bay, Muted Tidal Pocket wetlands, Huntington Harbour, and Anaheim Bay Wildlife Refuge, which are likely to suffer increases in water quality impairment when site development produces greater volumes and velocities of runoff as well as introducing increased pollutant loads.

The property owner has indicated that it is willing to consider providing a natural treatment system in conjunction with site development, but only if it is allowed within the ESHA buffer and does not constrain their desired development footprint.

STANDARD OF REVIEW

For the proposed Land Use Plan amendment, the standard of review is conformance with and satisfaction of the requirements of the Chapter 3 policies of the Coastal Act. For the proposed Implementation Program amendment, the standard of review is conformance with and adequacy to carry out the provisions of the certified Huntington Beach Land Use Plan, as amended.

SUMMARY OF PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in Local Coastal Program development. During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program for approval, local governments shall hold a public hearing or hearings on that portion of the program which has not been subjected to public hearings within four years of such submission. The City held numerous public hearings on the proposed LCP amendment as shown on exhibit D.

All City staff reports were made available for public review in the Planning Department and in the Huntington Beach Public Library. Public hearing notices were mailed to property

owners of record for the parcels that are the subject of the amendment as well as parcels within a 1,000 foot radius (including occupants), and notice of the public hearing was published in the Huntington Beach Independent, a local newspaper of general circulation.

ADDITIONAL INFORMATION

Copies of the staff report are available online on the Coastal Commission's website at www.coastal.ca.gov or at the South Coast District office located in the ARCO Center Towers, 200 Oceangate, Suite 1000, Long Beach, 90802. To obtain copies of the staff report by mail, or for additional information, contact Meg Vaughn in the Long Beach office at (562) 590-5071. The City of Huntington Beach contact for this LCP amendment is Scott Hess, Acting Director of Planning, who can be reached at (714) 536-5271.

I. STAFF RECOMMENDATION

A. Denial of the LUP Amendment as Submitted

MOTION: *I move that the Commission certify Land Use Plan Amendment No. 1-06 to the City of Huntington Beach Local Coastal Program as submitted by the City of Huntington Beach.*

STAFF RECOMMENDATION TO DENY:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the 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:

The Commission hereby denies certification of the Land Use Plan Amendment No. 1-06 as submitted by the City of Huntington Beach and adopts the findings set forth below on the grounds that the amendment does not meet the requirements of or conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

B. Approval of the LUP Amendment with Suggested Modifications

MOTION: *I move that the Commission certify Land Use Plan Amendment No. 1-06 for the City of Huntington Beach if it is modified as suggested by staff.*

STAFF RECOMMENDATION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

Staff recommends a **YES** vote. Passage of the motion will result in the certification of the land use plan amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

RESOLUTION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Land Use Plan Amendment No. 1-06 for the City of Huntington Beach if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

C. DENIAL OF THE IP AMENDMENT AS SUBMITTED

MOTION: *I move that the Commission reject the Implementation Plan Amendment No. 1-06 for the City of Huntington Beach as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby denies certification of the Implementation Plan Amendment No. 1-06 submitted for the City of Huntington Beach and adopts the findings set forth below on grounds that the Implementation Plan amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted

D. Approval with Suggested Modifications

MOTION: *I move that the Commission certify the Implementation Plan Amendment No. 1-06 for the City of Huntington Beach if it is modified as suggested by staff.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Plan Amendment 1-06 for the City of Huntington Beach if modified as suggested and adopts the findings set forth below on grounds that the Implementation Plan amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Plan amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

II. SUGGESTED MODIFICATIONS

Certification of City of Huntington Beach LCP Amendment Request No. 1-06 is subject to the following modifications.

The City's existing language is shown in plain text.

The City's proposed additions are shown in **bold text**.

The City's proposed deletions are shown in ~~strike out, underlined, italic text~~.

The Commission's suggested additions are shown in **bold, italic, underlined text**.

The Commission's suggested deletions are shown in **bold, italic, underlined, strike out text**.

LAND USE PLAN SUGGESTED MODIFICATIONS:

SUGGESTED MODIFICATION NO. 1

Sub-Area Descriptions and Land Use Plan

The City's certified and proposed Land Use Plan (LUP) language, on page IV-C-11, under the heading: Zone 2 – Bolsa Chica, shall be modified as follows:

Existing Land Uses

Inland (Pacific Coast Highway and areas north to the Coastal Zone boundary.)
The majority of Zone 2, the Bolsa Chica, is located outside the City's corporate boundary, within the County of Orange. The area is in the City's Sphere of Influence ... A ~~44~~ **50** acre area between Los Patos **the residential development along Kenilworth Drive** and the **East Garden Grove** Wintersburg Flood Control Channel is vacant and includes a small section of the Bolsa Chica bluffs.

Coastal (Seaward of Pacific Coast Highway)

...

Coastal Element Land Use Plan

Inland (Pacific Coast Highway and areas north to the Coastal Zone boundary.)

The Coastal Element does not present a land use plan for the Bolsa Chica. The land area north of the Bolsa Chica, within the City’s corporate and Coastal Zone boundaries, is built out consistent with its Coastal Element designation of low density. The area west of the Bolsa Chica is also developed consistent with the Coastal Element Land Use designation of low density residential and multi-family residential. The vacant 44 acre area next to the Wintersburg Flood Control Channel retains its existing designation as an “Area of Deferred Certification.” Prior to development of the site, an amendment to the City’s Local Coastal Program will be required, subject to Coastal Commission approval; the amendment would take effect upon Commission certification. Portions of this zone are included in the Community District/Sub-area Schedule as sub-areas 4G and 4J. ~~The Coastal Element land use designation for the vacant 45 acre area next to the East Garden Grove-Wintersburg Flood Control Channel was recently certified as RL-7 (Low Density Residential) and OS-P (Open Space – Park). In addition, approximately 5 acres of land was annexed from the County of Orange into the City of Huntington Beach. This area is designated RL-7 (Low Density Residential) and OS-C (Open Space – Conservation).~~

The fifty (50) acre area (including the 5 acre area annexed by the City in 2004) adjacent to and immediately north of the East Garden Grove/Wintersburg Flood Control Channel and adjacent to and immediately west of Graham Street is land use designated Residential Low Density, Open Space – Parks, and Open Space – Conservation. (See Figure C-6a)

Approximately two (2) acres of wetland area exists at this site. In addition, Eucalyptus Grove Environmentally Sensitive Habitat Area (ESHA) exists at this site. The wetland and ESHA areas are designated Open Space –Conservation. In addition, all the area within 100 feet of the wetlands and all area within 100 meters of the ESHA are designated Open Space –Conservation.

The Wintersburg Channel Bikeway is identified at this site on the north levee of the flood control channel in the Commuter Bikeways Strategic Plan, which is the regional bikeways plan for Orange County (See page IV-C-49 and figure C-14).

SUGGESTED MODIFICATION No. 2

The table titled Zone 2 – Land Use Designations, on page IV-C-11, shall be modified as follows:

Zone 2 – Land Use Designations	
Residential	RL-7
Open Space	OS-P OS-S <u>OS-C</u>
“White Hole”	Area of Deferred Certification

Zone 2 – Specific Plan Areas	
None	
Zone 2 – General Plan Overlays	
4G, 4J	

SUGGESTED MODIFICATION NO. 3

Figure C-6 of the City’s Land Use Plan shall be modified to reflect the change in the City’s corporate boundary and to accurately reflect the correct areas of the certified land use designations (Residential – Low Density, Open Space – Parks, and Open Space Conservation) for the area.

SUGGESTED MODIFICATION NO. 4

New Figure C-6a shall be added to the City’s Land Use Plan, which shall be a site plan of the Parkside site and shall depict the approved land use designations on the site, including the location and extent of all wetlands, environmentally sensitive habitat areas, and the buffer areas for each as shown on exhibit L. Figure C-6 shall include the following note: “The wetland and ESHA areas depicted on Figure C-6a shall not preclude recognition of additional wetland and/or ESHA area, as well as necessary buffer area, if such is discovered in the future.”

SUGGESTED MODIFICATION NO. 5

Add new subarea 4-K to table C-2 (Community District and Subarea Schedule) as depicted below:

<u>Subarea</u>	<u>Characteristic</u>	<u>Standards and Principles</u>
<u>4-K</u>	<u>Permitted Uses</u>	<u>Categories: Residential Low Density (RL-7)</u> <u>Open Space Conservation (OS-C)</u> <u>Open Space Parks (OS-P)</u> <u>See Figure C-6a</u>
	<u>Density/Intensity</u>	<u>Low Density Residential</u> <u>Maximum of seven (7) dwelling units per acre.</u>
	<u>Design and Development</u>	<u>See Figure C-6a</u> <u>A development plan for this area shall include, consistent with the land use designations and Coastal Element policies, the following required information (all required information must be prepared no more than one year prior to submittal of a coastal development permit application):</u>

1. A Public Access Plan, including, but not limited to the following features:

- ❖ **Class I Bikeway (paved off-road bikeway; for use by bicyclists, walkers, joggers, roller skaters, and strollers) along the north levee of the flood control channel. If a wall between residential development and the Bikeway is allowed it shall include design features such as landscaped screening, non-linear footprint, decorative design elements and/or other features to soften the visual impact as viewed from the Bikeway.**
- ❖ **Public vista point with views toward the Bolsa Chica and ocean consistent with Coastal Element policies C 4.1.3, C 4.2.1, and C 4.2.3.**
- ❖ **All streets shall be ungated, public streets available to the general public for parking, vehicular, pedestrian, and bicycle access. All public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public (e.g. preferential parking districts, resident-only parking periods/permits, etc.) associated with any streets or parking areas shall be prohibited.**
- ❖ **Public access trails to the Class I Bikeway, public parks and to and within the subdivision, connecting with trails to the Bolsa Chica area and beach beyond.**
- ❖ **Public access signage.**
- ❖ **When privacy walls associated with residential development are located adjacent to public areas they shall be placed on the private property, and visual impacts created by the walls shall be minimized through measures such as open fencing/wall design, landscaped screening, use of an undulating or off-set wall footprint, or decorative wall features (such as artistic imprints, etc.), or a combination of these measures**

		<p><u>2. Habitat Management Plan for all ESHA, wetland, and buffer areas that provides for their perpetual conservation and management. Issues to be addressed include, but are not limited to, methods to assure continuance of a water source to feed all wetland areas, and, enhancement of habitats and their buffer areas.</u></p> <p><u>3. Archeological Research Design consistent with Policies C5.1.1, C5.1.2, C5.1.3, C5.1.4, and C5.1.5 of this Coastal Element.</u></p> <p><u>4. Water Quality Management Program consistent with the Water and Marine Resources policies of this Coastal Element. If development of the parcel creates significant amounts of directly connected impervious surface (more than 10%) or increases the volume and velocity of runoff from the site to adjacent coastal waters, the development shall include a treatment control BMP or suite of BMPs that will eliminate dry weather flow to adjacent coastal waters and treat runoff from at least the 85th percentile storm event based on the design criteria of the California Association of Stormwater Agencies (CASQA) BMP handbooks, with at least a 24 hour detention time. Natural Treatment Systems such as wetland detention systems are preferred since they provide additional habitat benefits, reliability and aesthetic values.</u></p> <p><u>5. Pest Management Plan that, at a minimum, prohibits the use of rodenticides, pesticides, and herbicides in outdoor areas, except necessary Vector Control conducted by the City or County.</u></p> <p><u>6. Landscape Plan for non-habitat and non-buffer areas that prohibits the planting, naturalization, or persistence of invasive plants, and encourages low-water use plants, and plants primarily native to coastal Orange County.</u></p>
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7. Biological Assessment of the entire site.

8. Wetland delineation of the entire site which recognizes and acknowledges the site as being a “problem area” due to historic tidal inundation and an atypical situation due to historic farming.

9. Domestic animal control plan that details methods to be used to prevent pets from entering the ESHA, wetland, and buffers areas. Methods to be used include, but are not limited to, appropriate fencing and barrier plantings.

10. Hazard Mitigation and Flood Protection Plan, including but not limited to, the following features:

- ❖ Demonstration that site hazards including flood and liquefaction hazards are mitigated;
- ❖ Minimization/mitigation of flood hazard shall include the placement of a FEMA-certifiable, vegetated flood protection levee from the north levee of the East Garden Grove Wintersburg Flood Control Channel to the bluff to the north. The solution shall, in addition to achieving hazard mitigation goals, be the most protective of coastal resources including wetland and ESHA;
- ❖ Assurance of the continuance and enhancement of the wetlands and ESHA.

Residential:

Residential development, including appurtenant development such as roads and private open space, is not allowed within any wetland, ESHA, or required buffer areas.

All development shall assure the continuance of the wetlands.

Open Space Conservation:

A. Wetlands:

Only those uses described in Coastal Element Policy C 6.1.20 shall be allowed within wetlands.

All development shall assure the continuance of the wetlands.

Wetland Buffer Area:

A buffer area is required along the perimeter of the wetlands and is required to be of sufficient size to ensure the biological integrity and preservation of the wetland the buffer is designed to protect.

A minimum buffer width of 100 feet shall be established.

Uses allowed within the wetland buffer are limited to:

- 1) those uses allowed within wetlands per Coastal Element Policy C 6.1.20;**
- 2) vegetated flood protection levee that is the most protective of coastal resources including wetland and ESHA;**
- 3) No active park uses (e.g. tot lots, playing fields, picnic tables, bike paths, etc.) shall be allowed within 100 feet of wetlands.**

B. Environmentally Sensitive Habitat Areas:

Only uses dependent on the resource shall be allowed.

Environmentally Sensitive Habitat Areas (ESHA) Buffers:

A buffer area is required along the perimeter of the ESHA and is required to be of sufficient size to ensure the biological integrity and preservation of the ESHA the buffer is designed to protect.

A minimum buffer width of 100 meters (328 feet) shall be established.

Uses allowed within the ESHA buffer are limited to:

- 1) **uses dependent on the resource;**
- 2) **habitat restoration and management;**
- 3) **vegetated flood protection levee that is the most protective of coastal resources including wetland and ESHA;**
- 4) **a water quality Natural Treatment System is allowed up to within 100 feet of the ESHA, except that any portion of the treatment wetlands that require periodic disturbance or contain roadways shall be limited to the outer third of the buffer area and as close to the development area as feasible**
- 5) **within the outer 100 meters only, and as close to development as is feasible – passive recreational uses such as trails and benches for education and nature study.**
- 6) **In addition to the 100 meter ESHA buffer, grading shall be prohibited within 500 feet of an occupied nest during the breeding season (considered to be from February 15 through August 31).**

C. Habitat Management Plan shall be prepared for all areas designated Open Space Conservation.

D. Protective Fencing: Protective fencing or barriers shall be installed along any interface with developed areas, to deter human and pet entrance into all restored and preserved wetland and ESHA buffer areas.

Open Space Parks:

Uses permitted by the Open Space Parks land use category; except that, no uses other than those allowed in Coastal Element Policy C 6.1.20 and as allowed in Subarea 4-K Open Space Conservation as described above and restored wetland area, shall be allowed within 100 feet of a wetland or within 100 meters of an environmentally sensitive habitat area.

SUGGESTED MODIFICATION No. 6

Update the existing language on Page IV-C-54, under the heading Parks, to reflect proposed Parkside area to be land use designated Open Space – Parks. Also, update Table C-4, also on page IV-C-54 to reflect new Parkside park area.

Update figure C-16, Significant Recreational Resources, to reflect park area within the Parkside area.

SUGGESTED MODIFICATION No. 7

On page IV-C-60 and IV-C-61, under the heading Visual Resources, The Bolsa Chica Mesas, revise to include visual resources within Parkside area as follows:

The northwestern side of the Bolsa Chica Ecological Reserve includes bluffs that rise to an upland area known as the Bolsa Chica Mesa. These bluffs are primarily under the County's jurisdiction (only a small part of the bluff lies in the City) but are within the City's Sphere of Influence for potential future annexation. The mesas constitute a significant scenic resource within the City's coastal Zone. **The 50 acre site (located west of and adjacent to Graham Street and north of and adjacent to the East Garden Grove Wintersburg Orange County flood Control Channel) known as the "Parkside" site affords an excellent opportunity to provide a public vista point in the southwest corner. A public vista point in this location would provide excellent public views toward the Bolsa Chica and ocean. Use of the public vista point will be enhanced with construction of the Class I bike path along the flood control channel and public trails throughout the Parkside site.**

SUGGESTED MODIFICATION NO. 8

On page IV-C-70 add the following language in the first paragraph under the heading Environmentally Sensitive Habitats, to include reference to the wetland and Eucalyptus ESHA on the Parkside site:

... The City's Coastal Element identifies ~~two~~ **three** "environmentally sensitive habitat areas" within the City: 1) the Huntington Beach wetland areas, and 2) the California least tern nesting sanctuary, **and 3) the wetlands and Eucalyptus ESHA on the Parkside site.** (See Figure C-21 **and Figure C-6a**). The Coastal Element includes policies to protect and enhance environmentally sensitive habitat areas in accordance with the Coastal Act.

Also, on page IV-C-72 add the following new section describing the Eucalyptus ESHA and wetlands on the Parkside site, after the paragraph titled California Least Tern Nesting Sanctuary:

Parkside Eucalyptus ESHA and Wetlands (See Figure C 6a)

Historically, this site was part of the extensive Bolsa Chica Wetlands system. As of 2006, three wetland areas were recognized at the Parkside site, a 0.45 acre wetland on the “former County parcel” in the southwest corner of the site, a 0.614 acre wetland near the base of the bluff near the western property line, and a 0.9515 acre wetland near the mid point of the southern property line near the East Garden Grove Wintersburg Flood Control channel. These wetland areas as well as their buffer areas are designated Open Space Conservation, and uses allowed within this area are limited.

In addition, on the site’s southwestern boundary, at the base of the bluff, is a line of Eucalyptus trees that continues offsite to the west. These trees are used by raptors for nesting, roosting, and as a base from which to forage. The trees within this “eucalyptus grove” within or adjacent to the subject site’s western boundary constitute an environmentally sensitive habitat area (ESHA) due to the important ecosystem functions they provide to a suite of raptor species. The Eucalyptus trees along the southern edge of the Bolsa Chica mesa are used for perching, roosting, or nesting by at least 12 of the 17 species of raptors that are known to occur at Bolsa Chica. Although it is known as the “eucalyptus grove”, it also includes several palm trees and pine trees that are also used by raptors and herons. None of the trees are part of a native plant community. Nevertheless, this eucalyptus grove has been recognized as ESHA by multiple agencies since the late 1970’s (USFWS, 1979; CDFG 1982, 1985) not because it is part of a native ecosystem, or because the trees in and of themselves warrant protection, but because of the important ecosystem functions it provides. Some of the raptors known to use the grove include the white tailed kite, sharp-shinned hawk, Cooper’s hawk, and osprey. Many of these species are dependent on both the Bolsa Chica wetlands and the nearby upland areas for their food. These Eucalyptus trees were recognized as ESHA by the Coastal Commission prior to its 2006 certification of this section of this LCP, most recently in the context of the Coastal Commission’s approval of the adjacent Brightwater development (coastal development permit 5-05-020).

The Eucalyptus grove in the northwest corner of the site, although separated from the rest of the trees by a gap of about 500 feet, provides the same types of ecological services as do the rest of the trees bordering the mesa. At least ten species of raptors have been observed in this grove and Cooper’s hawks, a California Species of Special Concern, nested there in 2005 and 2006. Due to the important ecosystem functions of providing perching, roosting and nesting opportunities for a variety of raptors, these trees also constitute ESHA.

Both the wetlands and Eucalyptus ESHA areas, as well as their required buffer

areas, are designated Open Space Conservation to assure they are adequately protected.

SUGGESTED MODIFICATION NO. 9

Add the following policy to the certified Land Use Plan, on page IV-C-100 as new policy C 1.1.3a:

C 1.1.3a

The provision of public access and recreation benefits associated with private development (such as but not limited to public access ways, public bike paths, habitat restoration and enhancement, etc.) shall be phased such that the public benefit(s) are in place prior to or concurrent with the private development but not later than occupation of any of the private development.

SUGGESTED MODIFICATION NO. 10

Add the following policy to the certified Land Use Plan, on page IV-C-104 as new policy C 2.4.7:

C 2.4.7

The streets of new residential subdivisions between the sea and the first public road shall be constructed and maintained as open to the general public for vehicular, bicycle, and pedestrian access. General public parking shall be provided on all streets throughout the entire subdivision. Private entrance gates and private streets shall be prohibited. All public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public (e.g. preferential parking districts, resident-only parking periods/permits, etc.) associated with any streets or parking areas shall be prohibited.

SUGGESTED MODIFICATION NO. 11

Modify the following existing LUP Water and Marine Resources policies as follows:

C 6.1.6

(modify third and fourth paragraph)

The City shall require that new development and redevelopment, as appropriate, employ nonstructural Best Management Practices (BMPs) and structural BMPs designed to minimize the volume, velocity and pollutant load of stormwater runoff, prior to runoff discharge into stormwater conveyance systems, receiving waters and/or other sensitive

areas. **All development shall include effective site design and source control BMPs. When the combination of site design and source control BMPs is not sufficient to protect water quality, structural treatment BMPs along with site design and source control measures shall be required.** BMPs should be selected based on efficacy at mitigating pollutants of concern associated with respective development types.

To this end, the City shall continue implementation of the Municipal Non-Point Source **Stormwater** National Pollution Discharge Elimination System (NDPES) standards program **permit (Santa Ana Regional Water Quality Control Board Order No. R8-2002-0010, dated January 18, 2002, or any amendment to or re-issuance thereof)** of which the City is a co-permittee with the County of Orange through the Santa Ana Regional Water Quality Control Board. Per program parameters, continue to require a Water Quality Management Plan for all applicable new development and redevelopment in the Coastal Zone, ...

C 6.1.16

Encourage the Orange County Sanitation District to accept dry weather nuisance flows into the sewer treatment system prior to discharge. **New developments shall be designed and constructed to minimize or eliminate dry weather nuisance flows to the maximum extent practicable.**

C 6.1.25

Require that new development and redevelopment minimize the creation of impervious areas, **especially directly connected impervious areas**, and, where feasible, reduce the extent of existing unnecessary impervious areas, and incorporate adequate mitigation to minimize the alteration of natural streams and/or interference with surface water flow. **The use of permeable materials for roads, sidewalks and other paved areas shall be incorporated into new development to the maximum extent practicable.**

Add new policy C 6.1.30

Natural or vegetated treatment systems (e.g. bio-swales, vegetative buffers, constructed or artificial wetlands) that mimic natural drainage patterns are preferred for new developments over mechanical treatment systems or BMPs (e.g. water quality treatment plants, storm drain inlet filters).

IMPLEMENTATION PLAN SUGGESTED MODIFICATIONS

SUGGESTED MODIFICATION NO. 1

Sectional District Map 28-5-11 (DM 33Z) of the City's Implementation Program (Zoning and Subdivision Ordinance) shall be modified to reflect the change in the City's corporate boundary and to accurately reflect the correct areas of the certified zoning (Open Space Conservation, Open Space Park, Residential Low Density) for the subject area as reflected in exhibit L of this staff report).

III. FINDINGS FOR DENIAL OF THE LAND USE AND IMPLEMENTATION PLAN, AS SUBMITTED, AND APPROVAL WITH SUGGESTED MODIFICATIONS

The following findings support the Commission's denial of the proposed LCP Land Use Plan amendment as submitted, and approval of the Land Use Plan amendment with the incorporation of suggested modifications; and, denial of the Implementation Plan amendment, as submitted, and approval of the Implementation Plan amendment with the incorporation of suggested modifications. The Commission hereby finds and declares as follows:

A. Land Use Plan and Implementation Plan Amendment Description

The proposed Local Coastal Program (LCP) amendment is a project-specific amendment designed to make possible a low density residential development up to a maximum 7 dwelling units per acre (dua) on a vacant, approximately 50-acre site comprising two legal lots, most of which is currently in agricultural production. Most of the site is currently uncertified, and the LCP amendment would incorporate those areas into the City's existing LCP and establish land use and zoning designations for those areas as well as for the currently certified parts of the site. The City does not propose any changes to the text of its Implementation Plan (IP) provisions.

The geographic area that is the subject of this proposed LCP amendment can be divided into three areas. See Exhibit C4. The largest section is an area of the City that was deferred certification by the Commission at the time the City's Land Use Plan (LUP) was originally certified, in 1982, and that deferral carried through to the eventual LCP certification in 1985. The area of deferred certification (ADC) is approximately 40 acres.¹

¹ The staff report and Commission findings from the 1982 LUP certification are not entirely clear about how much area was deferred certification. However, the City has clearly depicted the area subject to this LCP amendment (through the exhibit to its resolution) and clearly "resubmitted" any portions of that area that may currently be certified. For purposes of this staff report, we refer to the uncertified area as being 40 acres, and the acreage of the other areas subject to this LCP amendment are calculated accordingly. However, if the City does not accept the Commission's certification

This amendment request proposes to certify this area by bringing it within the City’s existing LCP and applying land use and zoning designations to the area. Just northwest of the ADC is a 5 acre area that is currently certified (see footnote 1) and designated Open Space Parks. The City has resubmitted this area for certification with the same designations. Finally, there is a five acre area southwest of the ADC that was under the jurisdiction of the County of Orange until it was annexed by the City in 2004. Like the ADC, the City proposed to certify that area by bringing it within the broader City LCP, and land use designations and zoning are proposed for this area as well. The proposed amendment would allow the majority of the site to be developed with low density residential development, and would also set aside a portion of the site for open space uses including parks and conservation.

The amendment does not propose to create any new land use designations or zones that are not already used in the existing LCP. Each of the land use designations and zones proposed already exist within the certified Land Use Plan (LUP) and Implementation Plan (IP). The land use designations and zones that are proposed to be applied at the subject site have been applied elsewhere within the City’s certified LCP. However, because the site is an area of deferred certification or was recently annexed, no land use designation or zoning has ever been approved by the Commission at the subject site (with the exception of the 5 acre area designated and zoned Open Space-Parks).

Specifically, the amendment request proposes the following land use designations and zoning (see exhibit C):

Land Use		Acres
RL - 7	Low Density Residential-Maximum 7 units per acre	38.4 acres
OS-P	Open Space-Park	8.2 acres
OS-C	Open Space-Conservation	3.3 acres

Zone		Acres
RL-FP2-CZ	Low Density Residential-Floodplain Overlay-Coastal Zone Overlay	38.4
OS-PR-CZ	Open Space-Parks and Recreation-Coastal Zone Overlay	8.2
CC-FP2-CZ	Coastal Conservation-Floodplain Overlay- Coastal Zone Overlay	3.3

The area of deferred certification is forty acres and the former County parcel is five acres. In addition to the 45 acre area, the City has also included in this amendment the five acre area that was not deferred certification. The certified area totals approximately 50 acres and is land use designated and zoned Open Space – Parks. Most of the certified five acre

with suggested modifications, and the current *status quo* remains, the Commission does not, by these descriptions, take any position on the issue of what area is currently certified and what area is ADC.

parcel is slope area and not usable as an active park area. The proposed amendment would retain that land use and zoning, and would expand that designation into the formerly deferred area, for a total of 8.2 acres of Open Space – Parks. This five acre segment brings the total size of the subject site to 50 acres (40 acre ADC, 5 acre former County parcel, 5 acre certified area).

Of the approximately 5 acre former County area, 1.6 acres are proposed to become low density residential and 3.3 acres are proposed to become Open Space – Conservation (these figures are included within the totals in the chart above).

In addition to establishing land use designations and zoning for the subject site, the amendment also proposes text changes to the LUP. The certified LUP includes a section of area-by-area descriptions. In this section of the LUP, the acreage figure is proposed to be changed to reflect the annexation of the former County parcel (from the current 44 acre figure to the proposed 50 acre figure). In addition, language describing the area as vacant and an area of deferred certification is proposed to be replaced with the following language:

The Coastal Element land use designation for the vacant 45 acre area next to the East Garden Grove-Wintersburg Flood Control Channel was recently certified as RL-7 (Low Density Residential) and OS-P (Open Space – Park). In addition, approximately 5 acres of land was annexed from the County of Orange into the City of Huntington Beach. This area is designated RL-7 (Low Density Residential) and OS – C (Open Space – Conservation).

The subject area is currently comprised of two parcels: one 45 acre parcel (historic City parcel) and one 5 acre parcel (former County parcel).

B. Site Description and History

The site address is 17301 Graham Street, Huntington Beach, Orange County. It is bounded by Graham Street to the east, East Garden Grove Wintersburg Flood Control Channel (EGGWFC) to the south, unincorporated Bolsa Chica area to the west, and existing residential uses to the north (along Kennilworth Drive). The development to the north is located within the City. The land to the north and to the east of the project is located outside the coastal zone. The areas located east of Graham Street, south of the EGGWFCC, and immediately north of the subject site along Kennilworth Drive are all developed with low density residential uses. To the northwest, a multi-family condominium development, Cabo del Mar, exists. To the west of the subject site, along the top of the bluff on the western edge, is an undeveloped property know as the Goodell property. To the southwest of the subject site lies the Bolsa Chica wetlands restoration area. The 3.3 acre area on the subject site proposed to be land use designated Open Space Conservation is adjacent to the wetlands restoration area. West of the Goodell property is the site of the recently approved Brightwater development for 349 residential units (coastal development permit 5-05-020). The Brightwater site and the Goodell property are located on the Bolsa Chica mesa.

The majority of the site is flat with elevations ranging from about 0.5 foot below mean sea level to approximately 2 feet above mean sea level. The western portion of the site is a bluff that rises to approximately 47 feet above sea level. Also, generally near the mid-point of the southerly property line is a mound with a height of just under ten feet. The EGGWFCC levee at the southern border is approximately 12 feet above mean sea level.

Historically, the site was part of the extensive Bolsa Chica Wetlands system. In the southwest corner of the site, on the former County parcel, the City, property owner and Commission are in agreement that an approximately 0.45 acre wetland is present. In the 1980s, as part of the review of the County's proposed LUP for the Bolsa Chica, the Department of Fish and Game (CDFG) in the document titled "Determination of the Status of Bolsa Chica wetlands" (as amended April 16, 1982), identified this area as "severely degraded historic wetland – not presently functioning as wetland", and considered it within the context of the entire Bolsa Chica wetland system.

Also, in 1989, the U.S. Environmental Protection Agency (EPA) delineated a wetland area in the northwest area of the site, near the base of the bluff. Although subsequent studies have contested the previous wetlands claims in this area, some of these studies rely on questionable factual assertions, and it has not been demonstrated that these studies have appropriately applied the Coastal Commission standard for determining the presence or absence of wetlands.

In addition, on the site's western boundary, generally along the base of the bluff, are two groves of Eucalyptus trees. The trees are used by raptors for nesting, roosting, and as a base from which to forage.

The majority of the subject site has been more or less continuously farmed since at least the 1950s.

At the time the City's LUP was first considered for certification, in 1981, the Commission denied certification, in part because the City proposed a low density residential land use designation for the site that is the subject of the present action and the Commission found the site to contain wetlands. The City re-submitted the LUP in 1982, but it made no change to the proposed low density residential land use designation for the subject site. Once again, the Coastal Commission in its action on the City's proposed Land Use Plan, denied the certification for the MWD site (as the subject site was previously known), finding that it did contain wetland resources and that the designation of this parcel was an integral part of the ultimate land use and restoration program for the Bolsa Chica. The Commission findings for denial of the LUP for this area note the importance of this area in relation to the Bolsa Chica LCP. Of the 3.3 acres proposed to be Open Space – Conservation, none is located within the 40 acre area that was deferred certification. The site was being farmed at the time of the Commission's denial of the low density residential land use designation for the subject site.

A related coastal development permit application has also been submitted for the subject

site 5-06-327 Shea Homes, (previously submitted and then withdrawn were application Nos. 5-06-021, 5-05-256 and 5-03-029 for the same development proposal), as well as an appeal of a City permit for the certified area (A-5-HNB-02-376). The permit application and appeal request subdivision of the site to accommodate 170 single family residences, construction of the residences and associated infrastructure, preservation of the wetland identified on the former County parcel, and dedication and grading of active public park area. The most recent incarnation of the coastal development permit application was deemed complete on August 16, 2006. A waiver extending the time limit to act was signed by the applicant. The 270th day time limit to act on the permit is May 13, 2007. The coastal development permit application is expected to be scheduled for hearing at a subsequent Commission meeting. The applicant waived the deadline for the Commission to act on the appeal, but the Commission anticipates acting on it in conjunction with the permit application.

C. LCP History

The LCP for the City of Huntington Beach, minus two geographic areas, was effectively certified in March 1985. The two geographic areas that were deferred certification were the bulk of the subject site (known at that time as the MWD site – see footnote 1), and an area inland of Pacific Coast Highway between Beach Boulevard and the Santa Ana River mouth (known as the PCH ADC). The subject site is northeast of the Bolsa Chica LCP area. At the time certification was deferred, the subject area was owned by the Metropolitan Water District (MWD). The site has since been sold by MWD and is currently owned by Shea Homes. Both of the ADCs were deferred certification due to unresolved wetland protection issues. Certification of the subject site was also deferred due to concerns that it might be better utilized for coastal-dependent industrial facilities, since MWD at that time had a “transmission corridor” parcel within the Bolsa Chica Lowlands that it indicated could be used to connect seawater intake facilities located offshore to facilities located on its switchyard parcel in the City of Huntington Beach, through the subject parcel. This is no longer a possibility, since the State has taken over the lowlands, and given the development of the areas surrounding the subject parcel since 1982 (and pending development that has already been approved), this site is no longer appropriate for coastal dependent industry.

The PCH ADC was certified by the Commission in 1995. The wetland areas of that former ADC are land use designated Open Space – Conservation and zoned Coastal Conservation. No portion of the former PCH ADC is part of the current amendment request.

A comprehensive update to the City’s LUP was certified by the Commission on June 14, 2001 via Huntington Beach LCP amendment 3-99. The City also updated the Implementation Plan by replacing it with the Zoning and Subdivision Ordinance (while retaining existing specific plans for areas located within the Coastal Zone without changes). The updated Implementation Plan was certified by the Coastal Commission in April 1996 via LCP amendment 1-95. Both the LUP update and the IP update maintained the subject site as an area of deferred certification.

This LCP amendment was originally submitted as LCPA No. 2-02. LCPA 2-02 was subsequently withdrawn and re-submitted as LCPA 1-05. LCPA 1-05 was also withdrawn and re-submitted. The current amendment, LCPA 1-06 is the most recent submittal of the same amendment. No changes have been made to the amendment proposal during any of the withdrawal and re-submittals. The withdrawal and re-submittals were done in order to provide the property owner additional time to prepare and submit additional information regarding the presence of wetlands on-site and the use of the eucalyptus grove by raptors, and to allow Commission staff adequate time to review the additional information. LCPA 1-06 was received on April 13, 2006. On June 13, 2006, the Commission granted an extension of the time limit to act on LCPA No. 1-06 for a period not to exceed one year. The deadline for Commission action on LCPA No. 1-06 is July 12, 2007.

D. Land Use Plan Format

The City's certified Land Use Plan includes a section of Goals, Objectives and Policies. These are organized by specific resources, including headings such as Land Use, Shoreline and Coastal Resource Access, and Recreational and Visitor Serving Facilities, among many others. These are the certified policies that apply City-wide within the coastal zone. Another section of the certified LUP is the Technical Synopsis. The Technical Synopsis is an area-by-area description of each segment of the City's coastal zone. This section includes the descriptions of the existing land use designations. It also includes, after a narrative description of the sub-areas, Table C-2. Table C-2 is titled "Community District and Sub-area Schedule" and it provides greater specificity of what is allowed and encouraged within each subdistrict. This greater level of specificity provides a more detailed, site specific description than would be provided if the land use designation or general policies were considered alone. Table C-2 provides language on how general policies and designations would apply to specific sub areas of the coastal zone. Taken all together, these work well as the standard for development in the coastal zone.

The format of the suggested modifications applies this same structure to the amendment site. Many of the issues addressed by suggested modifications would be required by the general LUP policies, but, consistent with the format of the LUP, the suggested modifications are intended to provide a greater level of detail that applies to the specific circumstances of the subject site. For example, although the City's public access policies may be adequate to require a bike path along the EGGWFCC levee, the LUP format calls the reader's attention to the fact that, at this particular site, a bike path is appropriate and is therefore being required in this amendment. If one were working from the policies alone, some opportunities at certain sites may not be recognized. The LUP's existing format significantly maximizes the protection of resources within the coastal zone. The suggested modifications carry out that same format in order to assure protection of resources at the amendment site.

E. Denial of the Land Use Plan Amendment as Submitted

1. Wetland

Wetlands often provide critical habitat, nesting sites, and foraging areas for many species, some of which are threatened or endangered. In addition, wetlands can serve as natural filtering mechanisms to help remove pollutants from storm runoff before the runoff enters into streams and rivers leading to the ocean. Further, wetlands can serve as natural flood retention areas.

Another critical reason for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their scarcity. As much as 75% of coastal wetlands in southern California have been lost, and, statewide up to 91% of wetlands have been lost.

Section 30121 of the Coastal Act states:

“Wetland” means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

The Commission has further specified how wetlands are to be identified through regulations and guidance documents. Section 13577(b)(1) of the Commission's regulations states, in pertinent part:

Wetlands shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes ... For purposes of this section, the upland limit of a wetland shall be defined as:

- (A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;*
- (B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or*
- (C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not*

Section 30231 of the Coastal Act states, in pertinent part:

The biological productivity and the quality of ... wetlands ... appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, ... preventing depletion of ground water supplies and substantial interference with surface water flow, maintaining natural vegetation buffer areas that protect riparian habitats, ...

Section 30233(a) of the Coastal Act states:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- 1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- 2) *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- 3) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- 4) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- 5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- 6) *Restoration purposes.*
- 7) *Nature study, aquaculture, or similar resource dependent activities.*

Section 30250 of the Coastal Act states, in pertinent part:

(a) New residential ... development ... shall be located ... where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

In addition, the City's LUP includes Policy C 6.1.20, which limits filling of wetlands to the specific activities outlined in Section 30233 of the Coastal Act. And LUP policy C 7.1.4 states, in pertinent part: *"Require that new development contiguous to wetlands or environmentally sensitive habitat areas include buffer zones."*

The proposed amendment includes an Open Space Conservation designation on a 3.3 acre area within the former County parcel. The 3.3 acre area includes an undisputed wetland area (see exhibit H). The proposed Conservation designation is appropriate for this area. However, additional wetland areas exist at the subject site that would not be protected with the Conservation designation.

The Coastal Commission staff ecologist has reviewed considerable amounts of information regarding the extent of wetlands at the site, all of which are listed in his memorandum which is attached as Exhibit K to these findings and is hereby incorporated into these findings in its entirety. The property owner has submitted numerous documents intended to demonstrate that there are no wetlands on site, beyond the wetlands recognized on the

former County parcel (i.e. the CP wetlands). Local citizens have submitted documents intended to demonstrate that there are significant wetlands on site. These citizens are concerned by the prospect that development may be allowed at the site if the LUP amendment were approved as submitted (and as reflected in the related coastal development permit application 5-06-327, Shea Homes, and appeal A-5-HNB-02-376). All these submissions have been reviewed by the staff ecologist. In addition, the staff ecologist has reviewed historical information regarding the subject site and surrounding area. Based on his review of the available data, the Commission's staff ecologist determined that additional wetland areas exist at the subject site (see exhibit K). For the reasons listed in that memorandum and below, the Commission concurs and adopts its ecologist's conclusions. The additional wetland areas at the site are referred to as the Wintersburg Pond or WP, which is adjacent to the EGGWFCC levee along the southern edge of the site; and the Agricultural Pond or AP, located near the base of the bluff along the western edge of the property. The proposed LUP amendment would designate these wetland areas Low Density Residential and Open Space Parks. These land use designations allow grading, and the construction of houses, roads, and active parks, which would necessitate the dredging and filling of the wetlands. Such uses within wetlands are inconsistent with Section 30233 of the Coastal Act.

The memorandum dated July 27, 2006 from the Commission's staff ecologist states: "The available data suggest that portions of the agricultural field ... are inundated or saturated at a frequency and duration sufficient to support a preponderance of wetland plant species." Such areas meet the definition of wetlands under the Coastal Act and the Commission's Regulations."

There are three factors or "parameters" that are used to determine whether or not a wetland exists: the presence of hydrophytic vegetation, the presence of hydric soils, and the presence of wetland hydrology. The Commission finds an area to be wetland if any one of the three parameters is present. Usually, the presence or absence of hydrophytes or hydric soils is sufficient to determine whether a wetland exists. However, those two indicators are not necessary, as they do not actually define a wetland. Rather, an area is defined as a wetland based on whether it is wet enough long enough that it would support either of those two indicators. Therefore, the removal of vegetation by permitted activities does not change a wetland to upland.

Section 30121 of the Coastal Act provides the statutory definition of wetlands: "...lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes ...". Section 13577(b)(1) of the California Code of Regulations provides the regulatory definition of wetlands: "... land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes". Thus, the Coastal Act and the Regulations provide that a determination of the presence of wetlands may be made based on whether an area demonstrates the presence of sufficient water to promote hydric soils or to support hydrophytes, whether or not the soils and vegetation are present under existing conditions.

Because this area was historically a salt marsh and because the site has been historically farmed and continues to be farmed as of the adoption of these findings, the typically used field indicators cannot be relied upon. The repeated discing and plowing associated with the existing agricultural use destroys hydric soil features and prevents the development of natural vegetation. Nevertheless, the evidence presented in the ecologist's memo and summarized below indicates that the site is wet enough long enough to "support the growth" of hydrophytes. Thus, the site meets the definition of wetlands contained in the Commission's regulations. Furthermore, the site also meets the Coastal Act definition of wetlands in that it is "periodically covered in shallow water."

The wetland conclusion is based on two lines of evidence: (1) an examination of the vegetation at a nearby location that is similar in history, physical characteristics, and hydrology to the depressions in the agricultural field,² and (2) an informed estimate of the frequency of continuous inundation for long duration (greater than 7 days) at various sites.

Areas WP and AP were matched by the Commission's staff ecologist, with wetland areas on the County parcel that were similar in elevation and topography. Inundation in the agricultural areas and at the reference wetlands was similar in pattern, further suggesting that the latter is a good proxy for the former. Therefore, since the dominant vegetation at the reference areas is mostly comprised of wetland species, it is reasonable to expect that the agricultural areas WP and AP would also support a predominance of hydrophytes in the absence of farming (i.e. that they are wet enough to support such vegetation).

Establishing the extent of wetlands at the site, given its history of farming and disturbance, is not straightforward. The best approach for this site known to the Commission at this time is to base the wetland boundary on current conditions as inferred from recent topography and the available photographs of recent inundation.

Prior to about 1990, it appears from aerial photographs that significant inundation was generally confined to the area delineated as wetland by the EPA in 1989 (generally in the area of the AP). Based on analysis of aerial photographs dating from 1958 to 1985, the applicant's biological consultant concluded that inundation in that area tended to have a different footprint in different years and, based on this observation, he argues that no particular area should be identified as a wetland. However, all his estimated wetland polygons in the western portion of the agricultural field appear to fall within the area delineated by the EPA. In the absence of wetland vegetation, the drawing of wetland boundaries is an approximate exercise based on a small and haphazard collection of aerial

² In the second to last footnote in Dr. Dixon's memo, he notes that the topography of the reference site is actually similar to that of WP as it existed in 2003, not at present. More recently a box plough was used to fill area WP, which is apparent in 2006 topographic maps. The box plough fill is under investigation by Commission staff as an alleged violation. Accordingly, relying on the topography prior to the alleged violation yields the appropriate comparison. Additionally, the hydrology section of Dr. Dixon's memo states that LSA biologists stated that WP didn't pond until after about 1973. However, if this is due to changes in topography that occurred before 1973, it is again appropriate to focus on the post-1973 topography, as that represents current conditions. Conditions prior to 1973 may be irrelevant if topographical conditions changed prior to 1973, as such changes were pre-Coastal Act and therefore not Coastal Act violations.

photographs or ground observations and estimates of topography. Given the approximate nature of such delineations, it appears the consultant's results are actually additional evidence that the EPA delineation was both reasonable and accurate at the time it was made. Although, prior to about 1990, wetlands hadn't been delineated in the depression adjacent to the EGGWFCC (WP area) and inundation occurred there less frequently than in the area of the AP, in recent years, ample evidence exists to show that WP is inundated for long duration following significant rainfall.

Moreover, the entire area was originally deferred certification due to the historic presence of wetland on site. In deferring certification originally, the Commission found:

*North Properties of the Bolsa Chica (Between Wintersburg Channel & base of Bluffs)
(MWD Site #1 [virtually identical to the subject site of current LCP amendment³])*

The LUP designates this site for low density residential uses. No modifications were made in the LUP from the previous denial by the Commission.

The Commission found in its "Preliminary Wetlands Determination for the Bolsa Chica Local Coastal Plan, March 11, 1980, that all available information demonstrated that the vast majority of the Bolsa Chica low lands exhibit all the characteristics set forth for the identification of wetlands pursuant to Section 30121 of the Coastal Act and concluded that the information supported a preliminary determination that areas identified on Exhibit J of the "Preliminary Determination" are wetland for the purposes of the Coastal Act. The Commission had also previously found in its denial of the City's LUP that this area contained wetland resources.

Since that action and the previous review of the City's LUP, the Commission and staff have examined additional information concerning the Bolsa Chica wetlands system. As part of the review of the Bolsa Chica LUP the Dept. of Fish and Game in the document "Determination of the Status of Bolsa Chica wetlands (as amended April 16, 1982) identified this area as "severely degraded Historic wetland – Not Presently Functioning as Wetland" and considered it within the context of the entire Bolsa Chica wetland system. The DFG determined that this area is part of a 1,000 acre degraded wetland system in the area outside State ownership which is capable of being restored. The DFG report noted:

"The 440 acres of historic wetland which no longer function viably as wetland consists of approximately 250 acres of roads, and pads, 70 acres of agricultural land [including the subject site], and about 120 acres of viably

³ As indicated in footnote 1, the boundaries of the MWD site at the time of the 1982 staff report were not entirely clear. However, the site clearly covered what is now the 40-acre ADC and may have covered the former County parcel and some of the 5-acre certified area as well. Moreover, it did not extend south of the flood control channel, so the observations recounted here are definitely applicable to the site that is the subject of the current application.

functioning upland habitat. The roads and fill areas presently function as resting substrate for wetland-associated wildlife, and form narrow ecotones which add to and enhance the diversity of habitat available to wildlife. The 120 acres of upland habitat, considered in union, may be considered environmentally sensitive because of their special role in the Bolsa Chica wetland ecosystem. Were it not for the involvement of dikes, roads and relatively shallow fills, these 440 acres would be viably functioning wetlands.

The entire 1,324 acre study area, including 1,292 acres of historic wetland (in which 852 acres still function viably as wetlands [sic] constitutes a fundamentally inseparable wetland system of exceptional value to wildlife.”

The DFG also discussed potential restoration of these areas and noted that the amount of acreage and location of wetlands to be restored will be dependant on the amount of fill and existing wetlands which could be consolidated to allow some development in the lowlands.

Thus, when the Commission originally deferred certification of the subject site, it did so based on the presence of wetlands. The Commission found that the site contained wetlands, even though the wetland functions were impaired, as is the case today. In addition, the Commission recognized that the site was an integral part of the overall Bolsa Chica wetland system and could feasibly be restored. If the site were to be restored it would be a valuable addition to the Bolsa Chica wetlands restoration project. Sources to feed a restored wetland at the site would come from rainfall and possibly from the adjacent EGGWFCC, as well as urban runoff. In any case, restoration of the site as a freshwater wetland would be consistent with the historic wetland system which would typically have included a freshwater component, albeit significantly inland of the subject site. The addition of freshwater habitat to the Bolsa Chica wetlands restoration would greatly increase the biodiversity of the overall restoration project. In addition, taken with the preservation of the eucalyptus grove, described below, the area would provide significant habitat benefits. However, there is no proposal for restoration at this time. Nevertheless, the Coastal Act requires protection of any areas that continue to qualify as wetlands.

Section 30233 of the Coastal Act requires that only the uses specified therein may be allowed within wetlands and even then only if the use is the least environmentally damaging alternative, and only when adequate mitigation is provided. The subject site was deferred certification due to the presence of wetlands on site. Substantial evidence exists that demonstrates the presence of wetlands at the subject site extends beyond the 3.3 acre area proposed to be designated Open Space Conservation in the proposed LUP amendment to the areas referred to as AP and WP herein. As proposed, those two areas would be land use designated Low Density Residential and Open Space Parks.

As proposed, the land use plan amendment would designate these two wetland areas for residential development and for use as active parks, inconsistent with Section 30233 of the Coastal Act, which allows only the seven enumerated uses in wetlands. Residential and active park are not uses allowed under Section 30233. Therefore, the Commission finds

that the proposed amendment is inconsistent with the Coastal Act and must be denied.

In addition to protecting the wetland area itself, it is important to establish buffer areas between the wetland and development. Buffers, by separating development from wetlands, minimize the adverse effects of development on wetlands, thereby avoiding significant adverse effects to resources. Buffers also provide transitional habitat and upland area necessary for survival of various animal species. The Commission has typically found that a minimum 100-foot wetland buffer, or larger, is necessary to protect wetlands. Without the establishment of a minimum buffer size, projects could be approved with an inadequate buffer, jeopardizing the continuing viability of the wetland. Section 30250 of the Coastal Act requires that new development be located where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. Wetlands constitute a coastal resource. In addition, Section 30231 of the Coastal Act requires that all wetlands be maintained by providing natural vegetation buffer areas. The City's certified LUP includes Policy C 7.1.4, which requires buffers around wetlands. This policy would apply to the subject site, but it allows a lesser buffer area if existing development or site configuration preclude a full 100 feet. In this case, such circumstances do not apply because the site is 50 acres in size and is not constrained by the site configuration or by existing development. A buffer less than 100 feet from all on-site wetlands is not adequately protective of the wetland. The proposed amendment does not recognize all wetland areas present on site and does not provide any buffer requirements specific to the site. Thus, as proposed, the amendment could result in locating development too close to the wetland, threatening the survival of the resource, inconsistent with Section 30250 which requires that the location of development avoid significant adverse effects on coastal resources such as wetlands and Section 30231 which requires natural vegetation buffer areas.

Furthermore, Section 30250 of the Coastal Act requires that new development be located where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. Wetlands are coastal resources. In addition, Section 30231 requires that all wetlands be maintained and where feasible restored, by preventing depletion of ground water supplies and substantial interference with surface water flow. Based on information submitted with the related Coastal Development Permit application, a significant amount of earthwork would be necessary to prepare the site for residential development. It is anticipated that earthwork on the order of 400,000 cubic yards of cut and 600,000 cubic yards of fill (including 260,000 cubic yards that will be imported from off-site), with over-excavation to depths of up to 17 feet below sea level, will be necessary to eliminate potential hazards due to liquefaction, provide adequate structural support, and to raise the site above base flood elevation. It is essential that any earthwork undertaken on the site not interfere with the continuance of all on-site wetlands. No grading is allowed within the wetland under the Coastal Act (unless the grading is for the express purpose of wetland restoration). Grading outside of the wetland and necessary buffers, could only be considered if no adverse impacts to the wetlands resulted. If grading redirected groundwater and/or surface water flow such that water from the site no longer fed the wetlands, the development activity could have a significant adverse effect on the coastal resource (wetland) and thus would be inconsistent with Sections 30231 and 30250 of the

Coastal Act. However, the proposed amendment does not include any requirements that other site development, including earthwork, assure that no significant adverse effects on the wetlands will result. Thus, even if no grading were to occur within the wetlands and buffer areas, adverse impacts to the quality of on-site wetlands might result from the LUP amendment as proposed.

Further, when invasive and/or non-native species are planted within the buffer areas or within areas adjacent to the buffer, those species can displace the plants within the buffer and wetland. Introduction of non-native and invasive plants within the wetland and buffer, resulting in displacement of the wetland plants, degrades the wetland and creates significant adverse effects on the wetland, which is a coastal resource, inconsistent with the requirements of Section 30250 of the Coastal Act. In order to protect the wetlands and increase the likelihood of continuation of the wetland, only non-invasive, native plants should be allowed within the buffer.

In sum, as submitted, the LUP amendment does not adequately protect wetland resources as required by Coastal Act Sections 30231, 30233 and 30250. It therefore does not meet the requirements of, and is not in conformity with, these policies and therefore must be denied.

2. Eucalyptus ESHA

Section 30107.5 of the Coastal Act states:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30240 of the Coastal Act states:

- (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 area 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.*

In addition, the City’s certified LUP includes the following policies:

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.

In the event that development is permitted in an ESHA pursuant to other provisions

of this LCP, a “no-net-loss” policy (at a minimum) shall be utilized.

And

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.

The City’s certified LUP also includes policy C 7.1.4, which requires that new development contiguous to wetlands or environmentally sensitive habitat areas include buffer zones.

The subject site contains environmentally sensitive habitat area (ESHA). The trees in the “eucalyptus grove” within and adjacent to the subject site’s southwestern boundary (south grove) have been previously recognized as ESHA due to the important ecosystem functions they provide to a suite of raptor species. The trees are used for perching, roosting, or nesting by at least 12 of the 17 species of raptors that are known to occur at Bolsa Chica. Although it is known as the “eucalyptus grove”, the grove also includes several palm trees and pine trees that are also used by raptors and herons. None of the trees are part of a native plant community. Nevertheless, this eucalyptus grove has been recognized as ESHA for over 25 years (USFWS, 1979; CDFG 1982, 1985) not because it is part of a native ecosystem, or because the trees in and of themselves warrant protection, but because of the important ecosystem functions it provides. Some of the raptors found to be using the grove included the white tailed kite, sharp-shinned hawk, Cooper’s hawk, and osprey.

Many of these species are dependent on both the Bolsa Chica wetlands and the nearby upland areas for their food. The trees in the southwestern grove have also been recognized by the Coastal Commission as ESHA as defined in Section 30107.5 of the Coastal Act in previous Commission actions. The Commission first recognized the ESHA status of the southwestern grove many years ago, and the California appellate court in 1999 did not question the designation of the Eucalyptus grove as an ESHA protected by the Coastal Act when, in 1995, the County of Orange, on behalf of the predecessor applicant, Koll Real Estate Group, attempted to relocate that portion of the Eucalyptus grove within their property, through the LCP process, to the Huntington Mesa, in order to make room for full development of the upper and lower benches of the Bolsa Chica Mesa.

It should be noted that the Eucalyptus grove ESHA mapped by DFG in 1982, stops abruptly along the extension of Bolsa Chica Street. However, the grove continues east from there along the base of the bluff at the western edge of the subject property (see exhibit L). There is, however, no functional distinction between the area of the grove to the west of the Bolsa Chica Street extension and the rest of the grove. Raptors and other wildlife use and benefit from the entire grove. The abrupt truncation is not consistent with actual wildlife use and the habitat function of the entire grove. Thus, there is no justification for treating only the western end of the grove as ESHA and not the entire grove. For these reasons, in 2005 the Commission found that the trees throughout the

entire Eucalyptus grove along the southern edge of the mesa constitute ESHA that must be protected (see coastal development permit 5-05-020, Hearthside Homes/Signal Landmark – Brightwater Project).

The Commission has not previously considered the status of the portion of the Eucalyptus grove at the base of the mesa in the northwest corner of the Parkside site (north grove). The north grove is separated from the south grove by a gap of about 500 feet (see exhibit L). The trees in the north grove of the site provide the same type of ecological services as do the rest of the trees bordering the mesa. The following species have been observed in the north grove: white-tailed kite, merlin, red-shouldered hawk, turkey vulture, great horned owl, barn owl, peregrine falcon, Cooper's hawk, red-tailed hawk, and osprey. Of these, red-tailed hawk, Cooper's hawk, osprey, barn owl, and turkey vulture have been recently observed perching or roosting and Cooper's hawks, a California Species of Special Concern, were observed to nest there in 2005 and 2006. In addition, paired great horned owls have been regularly observed within the northern grove over the last 20 years by local raptor biologist (P. Bloom, personal communication to J. Dixon 01-31-07). The presence of an old nest suggests that the grove has probably supported nesting birds of prey in previous years. Like the rest of the Eucalyptus grove, these trees provide opportunities to raptors for perching, roosting and nesting and for hunting and safe movement corridors. In recognition of the important ecosystem functions provided by Eucalyptus trees in the north grove, and in conjunction with the fact that the trees could be easily disturbed, degraded, or entirely destroyed by development, the Commission finds that they meet the definition of ESHA under the Coastal Act.

Section 30240 requires that ESHA be protected from significant disruption of habitat values and only uses dependent on those resources are allowed within ESHA. Development adjacent to ESHA must be sited and designed to prevent impacts which would significantly degrade those areas. Section 30240 further requires that development be compatible with the continuance of those habitat and recreation areas. This policy is carried over into the City's certified LUP in the policies cited above. Although the area of the Eucalyptus ESHA in the southwest corner of the site is appropriately proposed to be designated Open Space Conservation, the area of the Eucalyptus ESHA located in the northwest corner of the site is proposed to be land use designated Open Space Parks. The Eucalyptus ESHA in the northwest corner is known to have supported a nesting pair of Cooper's hawks in the spring of 2005 and 2006. In addition to the nesting kites, this area of the Eucalyptus ESHA provides similar roosting and perching opportunities for the suite of raptor species. The Open Space Parks designation allows uses such as tot lots, playing fields and bike paths. Such uses are not resource dependant and, as such, allowing these uses within the ESHA is inconsistent with Section 30240 of the Coastal Act. In addition, these active uses within the ESHA would likely cause significant disruption, also inconsistent with Section 30240. Therefore, as proposed, the amendment is inconsistent with the resource protection policies of the Coastal Act, and therefore must be denied as submitted.

Section 30240(b) of the Coastal Act requires development in areas adjacent to environmentally sensitive habitat area be sited and designed to prevent impacts which

would significantly degrade those areas, and to be compatible with the continuance of those habitat areas. In order to assure the ESHA is not significantly degraded and is protected and remains viable, in addition to precluding non-resource dependent development within the ESHA, a buffer zone around the ESHA must be established. A buffer zone would require that development adjacent to the ESHA be set back an appropriate distance from the ESHA. The setback is intended to move the development far enough away from the ESHA so as to reduce any impacts that may otherwise accrue from the development upon the ESHA and that would significantly degrade the ESHA or be incompatible with its continuance. The distance between the ESHA and development, the buffer zone, must be wide enough to assure that the development would not degrade the ESHA and also would be compatible with the continuance of the ESHA.

For purposes of establishing protective buffers, the eucalyptus grove ESHA boundary should be considered to fall along the drip line of the outermost trees of the grove (see exhibit L). The specific area of an appropriate buffer is more difficult to quantify.

There is, to some degree, a subjective approximation element in assigning dimensions to protective habitat buffers or development setbacks. For example, it probably would not be possible to distinguish the different biological effects of a 100-foot buffer compared to a 110-foot buffer or those of a 300-foot-buffer from a 100-meter (328-foot) buffer. We tend to choose round numbers in whatever units we are using. However, the difference between a 100-foot buffer and a 100-meter buffer would provide discernable benefits to wildlife. Commenting on a proposed development that borders the eucalyptus grove ESHA on its western side (coastal development permit application number 5-05-020, Brightwater), wildlife agencies recommended a buffer width of 100 meters. However, the applicant's consultants for that project (who are also the consultants for Shea Homes) recommended a 100-foot buffer. These large differences reflect differing opinions concerning the sensitivity of raptor species to disturbance and differences in opinion concerning the acceptable risk of disturbance impacts to raptors, especially raptors that have the potential for nesting at Bolsa Chica.

In an urban environment, development setbacks are usually inadequate to protect all individuals of wildlife species of concern from significant impacts. In an urban setting a buffer is usually no more than one to several hundred meters, and usually less, whereas in a natural setting, a buffer of two kilometers has been found to be significantly more protective. For example, Findlay and Houlahan (1997) found a negative correlation between species richness in wetlands and the density of roads on land up to 2000 meters from the wetland and concluded that narrow buffer zones were unlikely to protect biodiversity.

Development must be separated from ESHAs by buffers in order to prevent impacts that would significantly degrade those areas. Again, with regard to the Brightwater development, buffer recommendations from the same ESHA included a 150-meter buffer recommendation by Dr. Findlay, of the University of Ottawa. CDFG and USFWS previously recommended the establishment of a 100-meter buffer on the Bolsa Chica Mesa in the 1980's. The Coastal Commission staff ecologist recommended a minimum

100-meter buffer around the eucalyptus ESHA. In further studying the appropriate buffer for the Eucalyptus ESHA, Dr. Dixon (staff ecologist) stated:

The buffer around the Eucalyptus tree ESHA is particularly important if those trees are to continue to function as nesting habitat for a variety of raptors. The California Department of Fish and Game and the U.S. Fish and Wildlife Service recommended a 100-m buffer. A literature review found that raptor biologists recommended buffers for various species of nesting raptors from 200m to 1500 m in width, with the exception of 50-m buffers from visual disturbance for kestrels and prairie falcons ... In an independent review concerning a prior development proposal at Bolsa Chica with 100-foot (30-m) buffers, raptor expert Brian Walton opined that developers "...often rely on buffers that I find largely ineffective for reducing raptor fright/flight response." [and] "[t]hey describe unusual tolerance, habituated individuals or exceptions to normal raptor behavior rather than the more common behavior of wild birds."

The 100-meter buffer recommended by USFWS (1979), CDFG (1982), and by staff is necessary to prevent disturbance to raptors that utilize the eucalyptus ESHA, and, based on raptor expert Peter Bloom's estimates of foraging distances, is also large enough to provide significant foraging opportunities close to the nest. This is particularly important because distant foraging increases the risk of nest predation. White-tailed kites, a fully protected species in California, have frequently nested at Bolsa Chica, and are generally considered relatively sensitive to human disturbance. Therefore, buffers that are adequate to protect nesting white-tailed kites should be adequate for most of the other species that are likely to nest in the eucalyptus ESHA. The following minimum spatial buffers have been recently recommended for nesting white-tailed kites: 100m (Bloom, 2002); 100m (Holmgren, 6.7.2002); 50m (J. Dunk (raptor researcher) in person communication to M. Holmgren, 2002); 46-61m (with "low-frequency and non-disruptive activities"; Froke, 2002). These estimates suggest that a 100-m buffer is probably adequate, but not overly conservative. Thus, the Commission finds that a buffer zone from the eucalyptus ESHA that is 100 meters wide would be appropriate to allow continuance of the ESHA and not cause significant disruption to it. However, no uniform buffer zone from the Eucalyptus ESHA is proposed as part of the LUP amendment. In fact, active park area would be allowed immediately adjacent to the trees under the LUP amendment as proposed. In addition, residential development would be allowed immediately adjacent to the ESHA, even though it cannot be considered compatible with the continuance of the ESHA.

Buffers should not be used for activities that have negative effects on the resources that are being protected.

Under the proposed LUP amendment, uses appurtenant to low density development such as roads would be allowed as close as 100 feet from the ESHA. The Open Space Park designation is proposed within and adjacent to the trees in the northwest corner of the site. Both of these uses within the locations proposed would not be consistent with the requirements of Section 30240 of the Coastal Act to protect ESHA. The land use designations that are acceptable within the ESHA are limited to only those designations

whose uses are dependent upon the ESHA. In addition, an appropriate buffer zone must be established. As proposed the LUP amendment would land use designate areas within and adjacent to the ESHA with designations that would allow uses that are not dependent upon the ESHA, and that could significantly degrade the ESHA. The proposed amendment is not consistent with Section 30240 of the Coastal Act and therefore must be denied.

It is also worth noting that California gnatcatchers (*Poliophtila californica californica*), a species listed as “threatened” under the Endangered Species Act, are known to frequent the subject site, especially the western portion. Also, Southern tarplant (*Centromedia parryi* ssp. *Australis*), a California Native Plant Society “1b.1” species (seriously endangered in California), also exists at the site.

The primary purposes of the buffer around the eucalyptus ESHA is to keep disturbance (activity, lights, noise, pets, etc.) at a distance such that it will not disturb raptors or prevent nesting by the more sensitive species such as white-tailed kites, and to provide foraging habitat for the raptors. Uses allowed within the ESHA buffer may only be allowed if they are consistent with the purposes of the buffer.

Passive recreation uses (e.g. trails, viewing areas, interpretive signage, and benches) may be acceptable within the outer 100 feet of the buffer when included as part of an overall management plan for the ESHA. Neither passive nor active recreation is a compatible use any closer to the ESHA. Even within the outer 100 feet of the ESHA buffer, acceptable passive recreational use should be located in the 10 meters closest to development where feasible. Notwithstanding the above, formalization of an existing passive nature trail along the northern property line and adjacent to the existing multi-family residential development, would be considered acceptable if there is no biologically superior alternative. It is acceptable because it is a passive nature trail and will not require disturbance to the habitat to formalize it and it would afford a natural/educational experience. However, as proposed, the amendment would allow uses other than those outlined above within the ESHA and ESHA buffer. Thus, the proposed Open Space Park designation within the ESHA and buffer zone is also inconsistent with Section 30240. Therefore, the Commission finds that the proposed amendment is inconsistent with Section 30240 which requires that ESHA be protected and so the LUP amendment as proposed must be denied.

3. Water Quality

Section 30230 of the Coastal Act states:

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 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30230 of the Coastal Act requires that marine resources be maintained, enhanced, and where feasible, restored. Section 30231 of the Coastal Act requires that the biological productivity and quality of coastal waters be protected and, where feasible, restored. Section 30231 further requires that the quality of coastal waters be adequate to maintain healthy populations of marine organisms. Section 30231 also requires the use of various means, including managing wastewater discharges, controlling runoff, protecting groundwater and surface water, encouraging wastewater reclamation, and protecting streams, to maintain and enhance water quality.

Development has the potential to adversely impact coastal water quality through the increase of impervious surfaces; increase of runoff, erosion, and sedimentation; and introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutants.

When development increases impervious surface area, the infiltrative function and capacity of the project site is decreased. The reduction in permeable surface therefore leads to an increase in the volume and velocity of runoff that can be expected to leave the site. The cumulative effect of increased impervious surface is that the peak discharge rate is increased and the peak occurs much sooner after precipitation events. Additionally, runoff from impervious surfaces results in increased erosion and sedimentation.

Further, pollutants commonly found in runoff associated with new development include:

- petroleum hydrocarbons such as oil and grease from vehicles;
- heavy metals;
- synthetic organic chemicals including paint and household cleaners;
- soap and dirt from washing vehicles;
- dirt and vegetation from yard maintenance;
- litter and organic matter;
- fertilizers, herbicides, and pesticides from household gardening;
- nutrients from wastewater discharge, and animal waste;
- bacteria and pathogens from wastewater discharge and animal waste.

The discharge of these pollutants to coastal waters can cause cumulative impacts such as:

- eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size;
- excess nutrients causing algae blooms and sedimentation increasing turbidity, which both reduce the penetration of sunlight needed by aquatic vegetation that provide food and cover for aquatic species;
- disruptions to the reproductive cycle of aquatic species;
- acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and
- human diseases such as hepatitis and dysentery.

These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes, reduce optimum populations of marine organisms and have adverse impacts on human health. Also where streams outlet on to recreational sandy beach areas, adverse impacts to public beach access can result.

The 50 acre project site is currently undeveloped, with the exception of farming activities. Under existing conditions, due to the site's topography and elevation, little or no runoff leaves the site during most rainfall events. The majority of the site (38.5/50 acres or 77% of the site) is proposed to be land use designated low density residential. The remaining area is proposed to be designated Open Space Parks (8.2 acres) and Open Space Conservation (3.3 acres). According to the Water Quality Management Plan (WQMP) prepared for the related coastal development permit (5-06-327) for the subject site, "[t]here are no pre-existing water quality problems with the project site."

However, installation of impervious surfaces and activities associated with residential development and related hardscape represent a potentially significant impact to water quality downstream of the project, including the Inner and Outer Bolsa Bay, Muted Tidal Pocket wetlands, Huntington Harbor and ocean waters. Because under current conditions little or no runoff leaves the site, residential development that would be allowed under the proposed amendment would create new adverse impacts where none currently exist. In addition, water bodies immediately downstream of the subject site, such as the Inner and Outer Bolsa Bay, Muted Tidal Pocket wetlands, Huntington Harbour, and Anaheim Bay Wildlife Refuge, are likely to suffer increases in water quality impairment when site development produces greater volumes and velocities of runoff as well as introducing increased pollutant loads.

In addition, although the existing LUP includes policies that require projects to incorporate water quality BMPs, none of the existing LUP policies express a preference for types of treatment control BMPs. A treatment control BMP is a system designed to remove pollutants from the runoff including the use of gravity settling, filtration, biological uptake, media adsorption or any other physical, biological, or chemical process.

The preferred option for treatment control BMPs is, first, vegetative (or natural) treatment (e.g. bio-swales, vegetative buffers, constructed or artificial wetlands), then, second, a combination of vegetative and mechanical systems or BMPs, and last, use of mechanical treatment systems or BMPs alone (e.g. site-specific water quality treatment plants, storm drain filters and inserts). There are a number of reasons for this hierarchy of preference including the often multiple benefits from non-mechanical BMPs such as pollutant removal, groundwater recharge, habitat creation, and aesthetics. Incorporation of artificial wetland between the housing and the eucalyptus ESHA would provide additional buffer for wildlife by restricting access. Furthermore, maintenance needs are typically more apparent and less frequent with vegetative treatment systems and thus are more likely to remain effective than mechanical systems such as storm drain inserts and the like which can become clogged and otherwise suffer mechanical difficulties. If mechanical treatment control BMPs are not continually maintained they will cease to be effective, and consequently water quality protection would not be maximized. In addition, a natural treatment system would have an environmental benefit by allowing dry weather flow to infiltrate into the wetland soil or evaporate, thus keeping excess irrigation water and other sources of freshwater runoff from discharging into Bolsa Bay waters. Although mechanical systems remove pollutants, they still discharge the treated freshwater into an environment that would be naturally dominated by saltwater during dry weather.

Incorporating vegetative treatment systems becomes more and more feasible when site design and source control BMPs are implemented. The area of land necessary to implement the preferred non-mechanical treatment systems can be minimized by incorporating site design and source control features into new development in the early planning stages. A site design BMP is a project design feature that reduces the generation of pollutants or reduces the alteration of the natural drainage features, such as minimizing impervious surfaces and the direct connectivity of impervious surfaces, as well as using permeable pavement. In addition, use of source control BMPs can also help to reduce the amount of land committed to a non-mechanical treatment system. A source control BMP is a practice that minimizes the introduction of pollutants and, thus, the release of pollutants into areas where they may be carried by runoff. Source control BMPs include: covering work areas and trash receptacles, practicing good housekeeping, and minimizing the use of irrigation and garden chemicals. One of the benefits of incorporating site design and source control BMPs into a development is that it becomes easier for a developer to incorporate natural treatment systems because, among other things, the use of site design and source control BMPs results in significantly less runoff needing to be treated and, thus, reducing the area needed to accommodate a natural treatment system.

The subject site represents an excellent opportunity to incorporate a natural treatment system, such as wetland detention ponds. There are multiple benefits from natural treatment systems such as pollutant removal, groundwater recharge, habitat creation, and aesthetics. Furthermore, maintenance needs are typically more apparent and less frequent with natural/vegetative treatment systems and thus are more likely to remain effective than mechanical systems such as storm drain inserts and the like which can become clogged and otherwise suffer mechanical difficulties. If mechanical treatment control BMPs are not continually maintained they will cease to be effective, and

consequently water quality protection would not be maximized.

Incorporating a natural treatment system, such as wetland detention ponds, is feasible at the site. The site is an appropriate candidate for a natural treatment system because it is a large site unconstrained by existing development, limited lot size or limited by topography. There is plenty of space on the site to accommodate a wetland detention or similar type system while still allowing a reasonable development footprint. Moreover, because little or no drainage currently leaves the site, it is important that development of the site not result in creation of new adverse water quality impacts such as would result from increased runoff leaving the site. In order to achieve the goal of not creating new adverse water quality impacts, all dry weather flow would need to be retained on site. The best way to accomplish retention of dry weather flow on site typically is some type of natural treatment system. Furthermore, in order to protect water quality year round it is appropriate to impose a standard that any run off that leaves the site (i.e. during storm events) must meet. The generally accepted standard is a requirement to treat runoff from at least the 85th percentile storm event, with at least a 24 hour detention time. The current LUP amendment does not require these site specific water quality measures and standards. Therefore, there is no assurance that water quality will be protected. Consequently the amendment is not consistent with the water quality policies of the Coastal Act and must be denied.

Once development of the site occurs, run-off, along with the inherent impacts, will enter the EGGWFCC and downstream water bodies. Downstream water bodies include the Inner and Outer Bolsa Bay, Muted Tidal Pocket wetlands, Huntington Harbour, and Anaheim Bay Wildlife Refuge. Thus, all practicable efforts to mimic existing site conditions should be employed including minimizing or avoiding the discharge of runoff from the developed site. As proposed, the LUP amendment does not identify site specific water quality standards. Consequently the amendment is not consistent with the water quality policies of the Coastal Act and must be denied.

The use of permeable materials for paved areas in new developments is a site design and source control measure which can reduce the rate and volume of the first flush of stormwater runoff and can help to minimize or eliminate dry weather flow. This type of BMP is becoming more common in new developments, so that costs of permeable pavements are approaching the costs of traditional pavements. By maintaining permeability on-site, a development can be designed to more closely retain the pre-development hydrologic functions of the site. And reducing the amount of runoff generated by a development reduces the volume and flow rate of runoff that may require a treatment control BMP. Use of permeable materials can help minimize impacts associated with the creation of impervious surface such as the increase in stormwater runoff, and corresponding reduction in infiltration. However, the proposed amendment does not include any discussion on the benefits of incorporating permeable materials into the design of future projects. Consequently the amendment is not consistent with the water quality policies of the Coastal Act and must be denied.

Although the City of Huntington Beach has an LUP policy to encourage the Orange County

Sanitation District to capture and treat dry weather flows, it does not address the other mitigation measure for dry weather flow which is to minimize or eliminate dry weather flow from new development sites. Many sources of dry weather flow can be eliminated by site design and source control BMPs, such as efficient irrigation, permeable pavement and natural treatment systems. The Commission finds dry weather flow in the arid climate of Southern California has the potential to adversely impact marine resources, even if the runoff is clean or treated to the maximum extent practicable and that new development should minimize or eliminate those flows. As proposed, the amendment does not include any requirements to minimize or eliminate dry weather flows through the use of site design and source control BMPs. Consequently, adverse water quality impacts due to dry weather flows are not minimized. The amendment is therefore not consistent with the water quality policies of the Coastal Act and must be denied.

While the Commission recognizes that the City's existing policies address water quality protection and improvement within the City, it also recognizes that there are additional, more specific steps that could be taken to further protect, restore and/or enhance the water quality of drainage generated at the subject site, and thus, the marine resources, biological productivity, and water quality of the ultimate receiving waters to which this project's effluent will flow. For that reason, the proposed amendment cannot be found consistent with Sections 30230 and 30231 of the Coastal Act. The Commission's standard of review, which requires the preservation, protection, and enhancement of coastal resources including water quality, necessitates that the additional measures, outlined above, be imposed. Thus, the Commission finds that, as proposed, the amendment is inconsistent with Sections 30230 and 30231 of the Coastal Act regarding water quality.

4. Public Access and Recreation

Section 30210 of the Coastal Act states:

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 30252 of the Coastal Act states, in pertinent part:

The location and amount of new development should maintain and enhance public access to the coast by ... (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, ... (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Coastal Act Section 30212.5 states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against impacts, social and otherwise, of overcrowding or overuse by the public in any single area.

Coastal Act Section 30213 states, in pertinent part:

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

Coastal Act Section 30223 states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

In addition, the City's certified LUP contains the following policies regarding public access:

Provide coastal resource access opportunities for the public where feasible and in accordance with the California Coastal Act requirements.

Encourage the use of City and State beaches as a destination point for bicyclists, pedestrians, shuttle systems and other non-auto oriented transport.

*Encourage the utilization of easements and/or rights-of-way along **flood control channels**, public utilities, railroads and streets, wherever practical, for the use of bicycles and/or pedestrian (emphasis added).*

*Maintain existing pedestrian facilities and **require new development** to provide pedestrian walkways and bicycle routes between developments (emphasis added).*

Link bicycle routes with pedestrian trails and bus routes to promote an interconnected system.

Develop a riding and hiking trail network and support facilities that provide linkages within the Coastal Zone where feasible and appropriate.

Balance the supply of parking with the demand for parking.

Maintain an adequate supply of parking that supports the present level of demand and allow for the expected increase in private transportation use.

Maintain and enhance, where feasible, existing shoreline and coastal resource access sites.

Promote and provide, where feasible, additional public access, including handicap access, to the shoreline and other coastal resources.

Promote public access to coastal wetlands for limited nature study, passive recreation and other low intensity uses that are compatible with the sensitive nature of these areas.

Maintain and enhance, where necessary, the coastal resource signing program that identifies public access points, bikeways, recreation areas and vista points throughout the Coastal Zone.

Preserve, protect and enhance, where feasible, existing public recreation sites in the Coastal Zone.

Ensure that new development and uses provide a variety of recreational facilities for a range of income groups, including low cost facilities and activities.

Encourage, where feasible, facilities, programs and services that increase and enhance public recreational opportunities in the Coastal Zone.

Promote and support the implementation of the proposed Wintersburg Channel Class I Bikeway.

The provision of public access in new development proposals is one of the main tenets of the Coastal Act. This emphasis has been carried over into the City's certified LUP. In certifying the LUP, the Commission recognized, via the approved LUP policies, the importance of including measures such as providing and enhancing public access to the sea and other coastal resources, adequate parking and alternate means of transportation, low cost recreational uses, and public access signage, with new development.

The 50-acre site is located in close proximity to the Bolsa Chica wetlands restoration area (see exhibit G). The Bolsa Chica Wetlands, at approximately 1,000 acres, is the largest remaining wetland in Southern California. Following the 1997 State acquisition of most of the remaining wetlands that were under private ownership, a comprehensive Bolsa Chica wetlands restoration effort is now underway. In addition, because it is tidally influenced, the Bolsa Chica wetlands constitute "sea" according to the Coastal Act definition (Section 30115). Because there is no public road between the subject site and the Bolsa Chica wetlands, the site is between the sea and the first public road. As such, the area is given special significance with regard to the requirement for the provision of public access. Given the prominence of the adjacent Bolsa Chica wetlands, appropriate public access and passive recreational opportunities must be provided and conspicuously posted. Further, the Coastal Act gives priority to land uses that provide opportunities for enhanced public access, public recreation and lower cost visitor recreational uses.

Beyond the Bolsa Chica wetlands restoration area is the Pacific Ocean and its sandy public beaches. Thus, public access to the Bolsa Chica area would, in turn, facilitate

public access, via alternate means of transportation (bicycle and pedestrian), to the ocean beach beyond.

Although the certified LUP includes (as listed above) strong public access policies, the proposed LUP amendment does not include any public access language specifically addressing public access needs appropriate for the site, taking into consideration the recreational needs of both the new residents and other users of the adjacent public recreational resources. In order to assure that access is maximized at the time of future site development, as described previously, specific language addressing access in the site specific section of the LUP is necessary. As proposed, no such language is included in the LUP amendment.

a) Bicycle Path

The subject site is immediately adjacent to the north levee of the East Garden Grove Wintersburg Flood Control Channel (EGGWFC). The County's Commuter Bikeways Strategic Plan (the regional bikeways plan for Orange County) identifies a Class I bikeway along the flood control channel. This is also reflected in the City's certified LUP. Figure C-14, Trails and Bikeways Map in the certified LUP identifies a proposed bikeway along the EGGWFCC adjacent to the site. A letter from the County's Public Facilities & Resources Department dated January 8, 1998 (see exhibit J) states:

"Regarding the City's proposal to continue the Class I bikeway northerly along the Wintersburg Channel to Graham Street: The County supports this. It would provide an excellent bikeway connection between the City's road system and the off-road wetlands perimeter route. (We suggest referring to this entire route – between Graham Street and PCH – as the Bolsa Chica Bikeway)."

In addition, a letter from the County's Public Facilities & Resources Department, dated February 13, 1998 (see exhibit J) commenting on a proposed tentative tract map for the subject site, states:

"A bicycle trail along the CO5 [East Garden Grove-Wintersburg Channel] north levee maintenance road will be required."

A bike route in this area would provide substantial public access benefits. It is encouraged in existing LUP policies. It would provide a connection between existing inland routes and the Bolsa Chica area and is expected to be extended in the future along the remainder of the EGGWFCC levee adjacent to the Bolsa Chica Restoration area. When such an extension occurs (as is anticipated in the City's LUP and by the County Public Facilities & Resources Department), the bike route would eventually link to the coast. An off road bicycle path already exists along the entire length of the City's ocean fronting beach. A bike path at the subject site and along the remainder of the EGGWFCC would provide a new connection from inland bicycle paths to this coastal path. Not only would such a bicycle path provide substantial public recreational benefits, but it would also improve public access opportunities by providing alternate means of transportation to get to the

coast and to the trails within the Bolsa Chica area. The City and the County have both indicated that a bicycle path in this location is desirable and appropriate. However, the proposed LUP amendment does not include any language specific to this site assuring that implementation of the bicycle trail will occur prior to or concurrent with sited development. Current LUP policy merely states “promote” and “encourage” the bicycle path’s implementation. Therefore there is no assurance that it will be built in a timely manner, or perhaps that it will be built at all. Thus, the amendment as proposed cannot be found to be consistent with Sections 30210, 30213 and 30252 of the Coastal Act regarding maximizing public access, and therefore, must be denied.

b) Public Streets and Parking

In addition, if the residential development that the proposed land use designation would allow were to be a private and/or gated development, public access would not be maximized or enhanced, inconsistent with Sections 30210, 30212.5, 30223 and 30252 of the Coastal Act. All public entry controls such as gates, gate/guard houses or other guarded entry, signage that discourages access and any other restrictions on the general public’s entry by and use of any streets or parking areas (e.g. private streets, preferential parking districts, resident-only parking periods/permits, etc.) would constrain the public’s ability to access the area proposed as public park as well as the public’s ability to access the public bike path along the EGGWFCC levee. In turn, public access to the Bolsa Chica area and ocean beyond would also not be provided. As stated previously, the site is between the first public road and the sea (in this case the Bolsa Chica wetlands). The provision of public parking within the area would allow visitors to begin a bike ride or walk along the levee, through the Bolsa Chica area, and on to the ocean front, that might otherwise not be feasible. Public streets and public parking within the residential area would not only support public recreational use in the vicinity of the subject site but also allow visitors from beyond the immediate vicinity to use the park area, and public recreational and open space resources in the Bolsa Chica area.

In addition, ungated public streets would facilitate the use of interior public trails within the development. Interior trails would further maximize, support and enhance public access opportunities. Public trails could be established leading from Graham Street to the area proposed to be designated Open Space Parks, and from within the development back onto the bike way along the EGGWFCC. Also, public trails along the edge of the wetland and ESHA buffers would provide an excellent public access experience consistent with the requirements of Sections 30210, 30212.5, 30213, 30223 and 30252 to maximize and enhance lower cost public recreational and public access opportunity with new development and assure adequate support facilities are provided. The provision of interior trails within a future development at the site would be especially consistent with Section 30252’s requirement that nonautomobile circulation be provided within the new development.

In order to assure that this aspect of public access (the provision of public parking within an ungated residential area with public streets and interior trails) is provided at the time the site is developed, language reflecting this must be incorporated into the LUP. However, no

such language is proposed as part of the LUP amendment. Thus the amendment cannot be found to be consistent with Sections 30210, 30212.5, 30213, 30223 and 30252 of the Coastal Act regarding maximizing and enhancing public access, and therefore must be denied.

c) Provision of Recreation and Public Access Benefits

Residential development of the subject site that would occur pursuant to the proposed amendment would have adverse impacts on public access and recreation unless the above described measures are incorporated into the design of a future project. In order to assure maximum public benefit, the public recreation and access measures would need to be provided in a timely manner. However, nothing in the proposed amendment or in the City's LUP currently requires that lower priority developments (such as residential) be phased to assure the provision of those uses that are a higher priority under the Coastal Act (such as public trails, parks, and parking) occur prior to or concurrent with the lower priority development. Without such a phasing requirement, it is difficult to assure that necessary public benefits would occur in a timely manner, or possibly even at all. Thus, as proposed, the amendment is inconsistent with Sections 30210, 30212.5, 30213 and 30252 of the Coastal Act regarding maximizing and enhancing public recreation and access and therefore must be denied.

5. Visual Resources

Section 30251 of the Coastal Act states:

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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

In addition, the City's certified LUP contains the following policies:

C 4.2.1

Ensure that the following minimum standards are met by new development in the Coastal Zone as feasible and appropriate:

- a) *Preservation of public views to and from the bluffs, to the shoreline and ocean and to the wetlands.*
- b) *Adequate landscaping and vegetation.*
- c) *Evaluation of project design regarding visual impact and compatibility.*
- d) ...

C 4.7.1

Promote the use of landscaping material to screen uses that detract from the scenic quality of the coast along public rights-of way and within public view.

The subject site offers the opportunity to provide public views from the site to the Bolsa Chica wetlands area and toward the ocean beyond. The related coastal development permit application (5-06-327) proposes a public viewing area in the southwest corner of the site. The southwest corner of the site is an excellent location for providing public views to and along the coast and scenic areas, as required by Section 30251. The location also works well with the anticipated bikeway along the EGGWFCC. However, the proposed LUP amendment does not include any discussion regarding provision of public view points in association with development of the site.

In addition, based on information submitted for the related coastal development permit application, it appears that elevations of the subject site may be raised in conjunction with any development of the subject site, such that future elevations may be similar to the elevation of the top of the EGGWFCC. The project described in the related coastal development permit application, includes a solid wall separating the rear yard area of future residences proposed under that application and the public bike path. The solid wall, proposed in the permit application to be ten feet high, immediately adjacent to the public bike path could have adverse visual impacts on public use of the bike path. However, adverse impacts could be minimized by incorporating measures such as reduced wall height, open fencing/wall, landscaped screening, use of an undulating or off-set wall footprint, or decorative wall features (such as artistic imprints, etc.), or a combination of these measures. The proposed amendment does not address this issue and does not assure that potential visual impacts of the development as viewed from the surrounding public recreational and open space areas will be addressed at the time the site is proposed for development. Therefore the proposed amendment is inconsistent with Section 30251 of the Coastal Act regarding protection of visual resources within the coastal zone and must be denied.

6. Archaeological Resources

Coastal Act Section 30244 states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

In addition, the City's certified LUP includes the following policies regarding Historic and cultural Resources:

Coordinate with the State Of California Historic Preservation Office to ensure that archaeological, paleontologic and historically significant resources within the Coastal Zone are identified.

Where new development would adversely impact archeological or paleontological resources within the Coastal Zone, reasonable mitigation measures to minimize impacts shall be required.

In the event that any Native American human remains are uncovered, the County Coroner, the Native American Heritage Commission, and the Most Likely Descendants, as designated by the California Native American Heritage Commission, shall be notified. The recommendations of the Most Likely Descendants shall be obtained prior to the disposition of any prehistoric Native American human remains.

A completed archeological research design shall be submitted along with any application for a coastal development permit for development within any area containing archeological or paleontological resources. The research design shall determine the significance of any artifacts uncovered and make recommendations for preservation. Significance will be based on the requirements of the California Register of Historical Resources criteria, and prepared based on the following criteria:

- a) Contain a discussion of important research topics that can be addressed; and*
- b) Be reviewed by at least three (3) county-certified archeologists (peer review committee).*
- c) The State Office of Historic Preservation and the Native American Heritage Commission shall review the research design.*
- d) The research design shall be developed in conjunction with affected Native American groups.*
- e) The permittee shall comply with the requirements of the peer review committee to assure compliance with the mitigation measures required by the archeological research design.*

A County-certified paleontologist/archeologist, shall monitor all grading operations where there is a potential to affect cultural or paleontological resources based on the required research design. A Native American monitor shall also monitor grading operations. If grading operations uncover paleontological/archeological resources, the paleontologist/archeologist or Native American monitor shall suspend all development activity to avoid destruction of resources until a determination can be made as to the significance of the paleontological/archeological resources. If found to be significant, the site(s) shall be tested and preserved until a recovery plan is completed to assure the protection of the paleontological/archeological resources.

In conjunction with the Environmental Impact Report (EIR) prepared for the related development project for the subject site, an Archaeological Assessment was prepared (Appendix H to the EIR, titled Archaeological Assessment of the SHEA Homes Project Tentative 15377 and Tentative Tract 15419, March 1997). A number of archaeological

sites are believed to be present on the subject site. These include CA-ORA-83 (known as the Cogstone site), CA-ORA-1308 and 1309. The majority of CA-ORA-83 is located off-site, but three areas of CA-ORA-83 are believed to be located within the subject site. CA-ORA 1308 and 1309 were discovered and recorded in 1991. They are described as “possible” or “potential” archaeological sites. In any case, the extent and significance of the archaeological resources on the site has not been conclusively determined. Thus, it is important that any future site development include a careful assessment of the presence and extent of archaeological resources. Although the LUP policies cited above outline procedures for sites that potentially contain archaeological resources, nothing in the proposed amendment identifies this site as one with the potential for archaeological resources. Consequently, there is no assurance that the potential for archaeological resources to occur on the site will be recognized in conjunction with future development proposals. If the potential for archaeological resources at the site is not recognized in the proposed LUP amendment for the site, application of the policies cited above may be overlooked. The proposed LUP amendment, which specifically addresses the subject site, provides the appropriate opportunity to make clear that archaeological resources may be present on this site, and therefore these specific policies must be applied. Without such language within the LUP amendment, it cannot be found consistent with Section 30244 of the Coastal Act, and so it must be denied.

7. Hazards

Section 30236 of the Coastal Act states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Coastal Act Section 30253 states, in pertinent part:

New Development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed LUP amendment would designate much of the subject site for residential development land use. Other than farming activities, the site is currently undeveloped.

Thus the suitability of the site for residential development must be considered.

Most of the site, except the bluff area on the site's western boundary, is comprised of lowlands that were once a part of the historic, extensive Bolsa Chica wetlands system. Historically the site functioned as a floodplain. However, with development of the East Garden Grove Wintersburg Flood Control Channel (EGGWFC) in the 1960s, the site has ceased serving that function. The northwestern corner of the site is crossed by a bluff, approximately 40 to 50 feet high, carved by the ancestral Santa Ana River. The portion of the site that is proposed to be land use designated residential is a very flat surface at an elevation of one to two feet below sea level.

The Commission's staff geologist has reviewed a great deal of technical information submitted in conjunction with the proposed LUP amendment and related coastal development permit application. The staff geologist has prepared three memos regarding the subject site, which are attached as exhibits I, P, and Q and are hereby incorporated as though fully set forth herein. The Commission concurs with and adopts the conclusions stated in the staff geologist's memos.

Potential geotechnical issues associated with residential development at the subject site include: ground shaking during a major earthquake on a nearby fault, possible surface rupture of the hypothesized Bolsa-Fairview Fault, liquefaction during such an earthquake, inadequate foundation support, and the stability of both natural and temporarily excavated slopes. In addition, development of the site raises certain hydrological issues. Following is a discussion in the staff geologist's memo of the potential issues:

"Reference (8) indicates that the soils at the subject site are subject to liquefaction during a major earthquake. In addition, the presence of peat could lead to settlement problems, because organic materials such as peat are subject to decay and volume loss with time. In order to mitigate for these hazards, Shea Homes proposes to overexcavate the entire site to depths as great as 17 feet below sea level, involving approximately 400,000 cubic yards of cut. Unsuitable fill material such as peat would be exported, and the remainder of the material – as well as approximately 260,000 cubic yards of imported fill, would be compacted to suitable densities to provide structural support and to be invulnerable to liquefaction."

The magnitude of over-excavation and recompaction in themselves raise some concerns. Since the over-excavation would extend well below sea level, dewatering will be necessary. The dewatering has the potential to lower ground water levels off-site, which could lead to settlement problems. In order to avoid settlement issues, the property owner's consultants have indicated that the excavation will take place in stages, with only narrow excavations open at any one time. In addition, a monitoring program to detect settlement would be in place. The property owner's consultants have indicated that water produced by the dewatering operations will be discharged into the storm water drainage system. Information submitted by the property owner's consultants indicates that the water is suitable for disposal into the ocean.

Regarding slope stability, the Memo prepared by the Commission's staff geologist states:

“The backcuts of the excavations undertaken to mitigate the liquefaction hazard will extend to the base of the north levee of the East Garden Grove Wintersburg Flood Control Channel. The loss of lateral support for the levee, especially if high pore water pressures persist due to the rapid removal of material in the cut, has the potential to destabilize the levees. Reference (12) contains slope stability calculations that demonstrate that even with the persistence of high pore pressures and loss of lateral support, the slope supporting the levee will have a factor of safety against sliding of 1.28, which is considered adequate for temporary excavations.

No slope stability calculations have been performed on the bluff in the northwestern corner of the site, and it is likely that it is only marginally stable. This area is planned for open space, however, so slope stability in this area is not a concern.”

In 1968 the California Department of Water Resources mapped a strand of the Newport-Inglewood fault across the site and dubbed it the Bolsa Fairview fault. Apparently the fault was located only indirectly on the basis of topographic expression, vertical offset of the base of the Bolsa aquifer, abrupt water quality changes between closely spaced wells, limited sea water intrusion northeast of the fault, and pumping data. However, more recent studies by the California Division of Mines and Geology concluded that there was insufficient evidence to indicate that the fault was either active, or, in fact, even that it exists, and the State Geologist accordingly de-listed the fault under the Alquist-Priolo Act. Based on the more recent studies, it appears there is insufficient evidence to warrant inclusion of the fault as an identified hazard.

The subject site is, geomorphologically, an historical flood plain, however, the floodplain has been channelized. Construction of the levees associated with the EGGWFCC has already functionally isolated the river channel from the flood plain, in this particular case. Moreover, the site lies at elevations of 1 to 2 feet below sea level. Areas of the surrounding neighborhoods lie at elevations of as low as 5 feet below sea level. Low berms in the Bolsa Chica lowlands, in addition to the EGGWFCC levees, protect these neighborhoods from tidal flooding. Storm water must be collected through a series of storm drains lying well below sea level, and pumped up into the EGGWFCC through a forebay at the Slater pump station, which is on the south side of the flood control channel adjacent to the subject site.

However, the capacity of the existing EGGWFCC is insufficient to carry the 100-year flood event. The channel will carry only about 4,200 cubic feet per second and will overflow in a 100 year event. Because the south levee is mostly lower than the north, more water would overflow to the south, and into the Bolsa Chica wetlands, than to the north. Nevertheless a total of about 52 acre feet would overtop the north levee in a 100-year flood event. In fact, overtopping of the levees will likely result in their complete failure, with a resultant loss of capacity of the EGGWFCC and inundation by ocean waters. The subject site and much of the surrounding area are susceptible to tidal flooding. Tidal flooding could occur when extreme high tides occur concurrently with storm surge events. According to some

studies, the existing tidal flooding risk was increased with the opening of the ocean inlet into the Bolsa Chica Restoration area. Regardless of the cause of the flooding, high tides and storm surge will create tidal flooding. The worst case scenario would occur when high tide and storm surge occurs during failure of the levees of the lower reaches of the East Garden Grove Wintersburg Flood Control Channel (EGGWFC) (which is possible as the levees are not FEMA certified). Under these scenarios, up to 170 acres of existing development, excluding the subject site, would be flooded. Therefore, contemplation of any development of the subject site must address potential flooding of existing inland development, as well as any proposed development of the subject site, during the 100-year flood event.

Section 30236 of the Coastal Act addresses channelization and other substantial alterations of rivers and streams and requires such work incorporate the best mitigation measures feasible. In addition, if flood control measures are permitted, the Commission must find there are no other feasible methods for protecting existing structures in the floodplain, and that such protection is necessary for public safety and to protect existing development.

In studies designed to determine appropriate base flood elevations for future residential development at the subject site, the property owner's consultants have made use of many diverse hydrologic models that included complete failure of the EGGWFCC levees, failure of the pumps, and variations in timing of the failures of both levees and pumps. Based on these studies, the property owner's consultants have demonstrated to the satisfaction of the Commission's staff geologist and to the satisfaction of the Commission that the 100-year Base Flood Elevations derived for the site are the worst case ponding elevations of all the hydrologic models considered and assure the safety of the site during a 100-year flood event.

The property owner has indicated, in documents submitted with the related coastal development permit application, that a vegetated flood protection feature (herein referred to as the "VFPP", essentially a vegetated flood protection levee) is proposed in the southwestern part of the site. In this area, the EGGWFCC is approximately 11 feet above sea level and the bluff at the western site boundary raises some 40 feet above sea level. There is a gap in elevation between the EGGWFCC levee and the bluff in the area of the former county parcel. A flood protection levee in this location could effectively capture tidal floods if it is constructed to an elevation above the expected flood flow. The existing EGGWFCC levee in the area adjacent to the subject site is expected to be reconstructed to meet FEMA certification standards and would have an elevation of 11 feet above sea level (the existing levee's elevation is also 11 feet above sea level). If a flood protection levee were constructed to the same elevation, flood waters would be prevented from flooding the subject site as well as the additional 170 inland acres.

As stated, the subject site and much of the surrounding area (an estimated 170 acres) is susceptible to flooding caused by a tidal surge and/or a 100-year storm event. Regarding the potential for the site and surrounding area to flood, the Commission's staff geologist states:

"In summary, I concur with the applicant [of the related coastal development permit application] and his hydrologic consultants that some combination of reinforcement of the EGGWFCC levee and an additional levee/floodwall between the northern levee of the EGGWFCC and the river bluff to the northwest is a necessary component of flood control protection to assure that the Parkside Estates [subject] site will be free of flood hazards in a 100-year flood event. A byproduct of these improvements will be protection of some 800 homes currently at risk."

Regarding tsunami hazard the Memo states:

"The Huntington Beach lowlands are quite vulnerable to a major tsunami. A tsunami that overtopped the low berms associated with the Pacific Coast Highway and the oil field roads in the Bolsa Chica wetlands could inundate a large area of the lowlands, much of which lies below sea level. The proposed "vegetated flood protection feature" and the improvements to the north levee of the East Garden Grove Wintersburg Flood Control Channel [proposed under the coastal permit application, not part of the LUP amendment], together with the increased pad elevation, will lower the vulnerability of the Parkside Estates site. Although the placement of fill on the site would displace flood waters into the surrounding neighborhood during a major tsunami, the "vegetated flood protection feature" does lower the susceptibility of this area to smaller tsunamis."

Regarding suitability of the subject site for development, the Memo concludes:

"In summary, the Parkside Estates is not suitable for residential development without fairly extensive mitigation measures, especially for the liquefaction and flood hazards. Shea Homes' planned method of remediation involves extensive landform alteration in the form of adding fill to raise the site above Base Flood Elevation. Although this is not a generally recommended method of mitigating a flooding hazard due to the effects it can have on adjacent areas, the planned drainage system improvements more than mitigate for these effects. The necessary excavations and dewatering operations have the capacity to induce subsidence or other instability in adjacent sites, but these effects will be mitigated by doing the excavation in stages and by careful monitoring. The site will experience strong ground shaking during a major earthquake. Early reports that an active fault crosses the site cannot, however, be supported by the data currently available."

In order to raise pads above base flood elevations, significant amounts of fill material will be imported onto the site, raising the site elevations from the existing 1 to 2 feet below sea level to 5.5 to 11.4 feet above sea level. This raises the question of whether such fill would result in flood waters being displaced to neighboring areas. However, the subject site as it currently exists is already at a higher elevation (1 to 2 feet below sea level) than the surrounding areas (as low as 5 feet below sea level). Flooding of these neighborhoods would occur even without site development, although it would be exacerbated by the addition of fill at the subject site, if mitigation is not undertaken.

The related coastal development permit application proposes to make several improvements to the area drainage system including improving the capacity and stability of the EGGWFCC, increasing the capacity of the storm drains under Kenilworth Drive and Graham Street, adding two new pumps to the Slater pump station, and constructing a Federal Emergency Management Agency (FEMA) certifiable “vegetated flood protection feature” at elevation 11 feet above sea level between the bluff along the western site boundary and the north levee of the EGGWFCC. If all these improvements were implemented they would more than mitigate for the exacerbated flood condition caused by the addition of fill necessary to protect existing development in any event, and it is in the least environmentally damaging location.

In summary, information submitted relative to the related coastal development permit application indicates some level of flood control is necessary to protect existing development and there are feasible mitigation measures available consistent with the requirements of Section 30236. However, there is no specific requirement in the proposed amendment to assure that measures necessary for risk reduction would be incorporated into future site development. Without such requirements in the amendment, there is no assurance that mitigation measures will be required and risks minimized as required by Sections 30236 and 30253 of the Coastal Act. Therefore the amendment must be denied as submitted.

8. Conclusion – Consistency with Chapter 3 Policies of the Coastal Act

As proposed, the Land Use Plan amendment contains significant deficiencies with regard to consistency with the Coastal Act. As proposed, the amendment cannot be found consistent with Coastal Act Sections 30210 and 30252 regarding maximizing access, 30251 regarding protection of public views, 30233 and 30250 regarding wetlands, 30240 regarding ESHA, 30244 regarding archaeological resources, 30230 and 30231 regarding water quality, or 30236 and 30253 relative to hazards. In sum, the proposed changes to the LUP do not meet the requirements of and are not in conformity with the policies in Chapter 3 of the Coastal Act. Therefore, the amendment request must be denied as submitted.

E. Approval of the Land Use Plan Amendment if Modified

1. Incorporation of Findings for Denial of Land Use Plan as Submitted

The findings for denial of the Land Use Plan as submitted are incorporated as if fully set forth herein.

2. Wetland

Section 30233 of the Coastal Act limits the uses allowed within a wetland to seven specifically enumerated uses. Section 30231 of the Coastal Act requires that all wetlands be maintained and where feasible restored, by preventing depletion of ground water

supplies and substantial interference with surface water flow and by maintaining natural vegetation buffer areas. In addition, Section 30250 of the Coastal Act requires that new development be located where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. Wetlands constitute a coastal resource. Wetlands exist at the subject site outside of the area proposed to be designated Open Space Conservation. Some wetland areas are proposed to be land use designated Low Density Residential and Open Space Parks. These land use designations allow for the construction of homes, infrastructure and associated improvements as well as active park areas and associated grading. Consequently, the proposed amendment would result in residential and park development within wetlands, inconsistent with the requirements of Section 30233 of the Coastal Act. Furthermore, the proposed land use designations would allow residential and park development within the area necessary for buffer zones between the wetlands and development, inconsistent with Sections 30231 and 30250 of the Coastal Act.

The land use designation in the City's existing LUP that is most protective of wetlands is the Open Space Conservation designation. Therefore, protection of all on site wetlands assured by designating all wetland areas on-site, as well as that amount of land necessary to provide adequate buffers, Open Space Conservation. If all of the wetland area and the necessary buffer area within the subject site were to be designated Open Space Conservation, rather than Low Density Residential and Open Space Parks, the LUP amendment would be consistent with Section 30233 regarding allowable development within wetlands, with Section 30231 regarding maintaining and possibly restoring wetlands, and with Section 30250 regarding locating development where it will not have adverse effects on coastal resources. A revised land use for the subject site, which designates all wetland areas and the necessary buffer area as Open Space Conservation is necessary.

It should be noted that construction of a VFPP (also called a vegetated flood protection levee) within the wetland buffer area, provided it is the least environmentally damaging feasible alternative, would not be incompatible with the continuance of the wetland, and therefore could be allowed within the wetland buffer. Only if modified as recommended to change the proposed land use designations to accurately reflect the extent of wetlands on site and to incorporate appropriate buffer area by land use designating these areas Open Space Conservation, can the proposed development be found consistent with the wetland protection policies of the Coastal Act.

It should be noted that construction of a flood protection levee within the wetland buffer area, provided it is the least environmentally damaging alternative, would not be incompatible with the continuance of the wetland. According to the related coastal development permit application for the subject site and the project proponent, the type of flood protection levee to be constructed would be a vegetated flood protection feature (VFPP), essentially a vegetated earthen levee with an internal sheet pile wall. The VFPP would not be expected to adversely impact the wetland because 1) there would only be temporary construction-related impacts, 2) once constructed, the VFPP would be planted to provide upland habitat that complements the wetland vegetation, and, 3) the VFPP would not require maintenance once constructed, thus intrusions into the buffer area due

to the VFPF would be limited only to those necessary during construction. For these reasons locating a flood protection levee such as the one described above within the wetland buffer would be consistent with Sections 30233 and 30250 of the Coastal Act regarding wetland protection.

Any wetland delineation prepared for the subject site must recognize that the site is both a 'problem area' (i.e. an area where normal conditions make the use of standard field indicators of wetland parameters difficult (e.g. soils formed under hydric conditions associated with tidal inundation that is no longer present)) and 'atypical' (i.e. recent human activities (e.g., plowing) or natural events (e.g. fire) have resulted in the lack of positive indicators of one or more wetland parameters). The wetland delineation must account for circumstances where indicators are absent or difficult to interpret but other evidence demonstrates that the component(s) recognized by the Commission that comprise a wetland are present or would be present if not for the 'problem' or 'atypical' situation. For example, the wetland delineation must recognize and account for circumstances where vegetation indicators cannot be expected; hydric soil indicators may be artifacts of prior conditions; the soil surface is frequently disturbed, which removes indicators of recent inundation; plowing may drastically alter the soil profile; irrigation might confound the interpretation of the presence of recruiting wetland plants and the presence of indicators of recent hydric conditions. Because the site has been historically, continuously farmed, these indicators may be lacking even though the area may be "wet enough, long enough" that wetland features would develop. It is critical that future wetland delineations of the site recognize this protocol and that, consequently, even if the usual wetland indicators are not observable, wetland areas must still be identified if those areas meet Coastal Commission criteria. Wetland delineations must be sufficiently current to represent present site conditions. As proposed, the LUP amendment does not include this clarifying information. Therefore a modification is suggested to specifically incorporate this standard into the site specific section of the LUP.

Furthermore, Section 30250 of the Coastal Act requires that new development be located where it will not have adverse effects on coastal resources. Wetlands constitute a coastal resource. Section 30231 of the Coastal Act requires that all wetlands be maintained and where feasible restored, by preventing depletion of ground water supplies and substantial interference with surface water flow and by maintaining natural vegetation buffer areas. Based on information submitted with the related coastal development permit application, a significant amount of earthwork would be necessary to prepare the site for residential development. It is essential that any earthwork undertaken on the site not interfere with the continuance of all on-site wetlands. No grading is allowed within the wetland and its buffer area under the Coastal Act (unless the grading is for the express purpose of wetland restoration). Grading, outside of the wetland, ESHA and necessary buffers, could only be considered if no adverse impacts to the wetlands resulted. If grading redirected groundwater and/or surface water flow such that water from the site no longer fed the wetlands, it would create an adverse effect on the wetland, which is a coastal resource, inconsistent with Sections 30231 and 30250 of the Coastal Act. The proposed amendment does not include any requirements that other site development, including earthwork, assure that no adverse effect occur to the wetlands. Thus, even if no grading

were to occur within the wetlands and buffer areas, adverse impacts to on-site wetlands might result from the LUP amendment as proposed. However, if the amendment is modified to include language that requires the protection of the wetlands from all development on-site, the amendment could be found to be consistent with Section 30250 of the Coastal Act which requires no adverse effects to coastal resources occur.

The owner of the subject site, who is the applicant for the related coastal development permit (Shea Homes), contends that the WP area does not provide any habitat function now and should not be considered a wetland. And that even if the area were to be preserved, it would not provide quality habitat and so alternatives that allow elimination of the WP wetland would be preferred. In support of their position, in a letter dated 1/23/07, the property owner states (see exhibit R):

“Given the existing elevation of the WP area at approximately 1.2 ft. MSL (NAVD 1988 datum), the existing elevation of the top of levee at approximately 11.0 ft. and the pad elevation of our proposed homes at approximately 7.0 ft., it is clear that the WP area will be in a hole if it is preserved in place. This will result in an approximate 16’ high vertical wall where the north edge of the levee joins the south side of the WP area. The easterly, northerly and westerly edges around the WP area (and buffer) would join an upward 2:1 slope that would join the proposed elevation of approximately 7.0 ft. While this plan could comply with Coastal Commission regulations, our team’s biologists do not feel it would result in a wetland area as viable as could be established if the WP were eliminated and mitigated at the westerly area of the project site to create a larger, consolidated wetland, as explained later in this letter.”

However, it does not appear that preserving the WP wetlands would in fact result in a 16’ high vertical wall on the southern edge of the wetland. Under existing conditions the elevation change between the WP wetland and the top of the levee is approximately 10 feet. The reconstructed levee would retain its 11 foot elevation at the top, which represents no change to the existing elevation change (i.e. the existing and proposed developed state are the same). It appears that the 16 foot figure derives from the assumption that a 6’ high wall would be placed along the top edge of the levee. In other areas of the site, it is the intent of the property owner to place a wall between the edge of residential development and the public bicycle/pedestrian path along the levee. It’s possible that such a wall may be appropriate where the public path abuts private development. But in the area where the levee abuts the preserved WP wetland, there is no need for such a wall. Private development would be set back more than 100 feet from the wetland, so that in the area of the WP wetland, privacy will not be an issue. If it is determined that some sort of fencing is needed for safety reasons along the edge of the bicycle/pedestrian path, a split rail fence or similar mechanism likely will suffice. So, preservation of the wetland would not result in a sixteen foot high vertical wall adjacent to the wetland.

As for the remainder of the area that would abut the preserved WP wetland, the Commission’s staff ecologist has found that a minimum of a 100 foot buffer would need to

be imposed around the WP wetland. If only the minimum buffer area were imposed at the time the coastal development permit is reviewed, that would result in an east-west expanse across the wetland - buffer area of more than 200 feet. The north – south expanse would be more than 100 feet. The property owner has submitted conceptual plans of the WP wetland area indicating that the transition between the outer edge of the buffer and future development area would be graded to a 2:1 slope. The transition area would allow for a grade change from approximately a one foot elevation to a seven foot elevation. In his letter of 1/23/07 the property owner states that preservation of the WP wetland is not desirable because preservation would result in a “hole” around the wetland. But this conclusion is based on their own conceptual drawing. If the design put forth by the property owner is undesirable, it may be appropriate to design a more gradual slope in the transition area between the buffer and the developed area. This issue is something that would be more thoroughly addressed when the coastal development permit application is reviewed.

The property owner’s 1/23/07 letter further claims that, although there are “options available to meet minimum NFIP [National Flood Insurance Program] requirements, the communities clearly prefer levees to be earthen backed (or earthen reinforced), without standing water bodies or wetlands on sides opposite those of water containment. Although it is not clear what specifically is meant by “communities” as used above, when asked numerous times to submit documentation to support this claim, none has been provided. Furthermore, it is not uncommon for flood control channels to closely abut existing development. In many such cases, no earthen backed structures exist. Such a situation exists in the case of the subject EGGWFCC in areas inland of the subject site. The 1/23/97 letter further claims that “dry, earthen backed area provides an area of inspection against leakage and water penetration. If a wetland were in this area, such inspections would be more difficult even though FEMA [Federal Emergency Management Agency] might accept the operation, inspection, and maintenance program as meeting minimum NFIP requirements.” In fact, an approximately 20 foot wide “farm road” exists between the WP wetland and the levee. Inspections of the levee could occur from this existing road. Moreover, in areas where existing development closely abuts a flood control levee and no earthen backing exists, levee inspections are still necessary and are somehow accommodated.

The property owner’s 1/23/07 letter further claims:

“The WP area ‘hole’ would need extensive and intrusive maintenance by either a homeowners association or public agency, depending on alternative, to prevent its becoming a trash collector that would minimize its resource value. Additionally, unless the WP area could be irrigated, landscaped with new plants, and intrusively maintained to avoid fire and vector (pest) hazards, the primary vegetation will be that of “upland weeds” – clearly not attractive for anyone and contrary to Coastal Commission’s intentions.”

However, as with any development allowed on a site with wetlands, a habitat management plan would be required at the time a coastal development permit is processed. Without a

habitat management plan assuring preservation and future viability of an existing on-site wetland, development of the site could not be found to be consistent with Section 30233 of the Coastal Act or with Section 30231 of the Coastal Act which limits development in wetlands and requires that wetlands be maintained and where feasible restored. Furthermore, residential subdivisions commonly include common and/or public open space area. Approval of such development routinely requires that a responsible party be identified and that future, on-going maintenance is assured. Moreover, areas suggested by the property owner (see below) for restoration and expansion would also need to be maintained in the long term. In that case, long term management is recognized by the property owner as feasible. There is no substantial difference between the WP area and those other areas the property owner has deemed feasible to manage to control trash, fire hazards or vector problems.

Finally the 1/23/07 letter suggests that in lieu of preserving the WP wetland, mitigation in the CP ("County" Parcel) area would provide a "superior alternative". The letter states:

"Wetlands exist within the CP today, although they are somewhat degraded. With WP mitigation, this would be an attractive area for wetland restoration and expansion to compensate for development of the WP area. The end result would be a consolidated wetland area of high quality, immediately adjacent to the Bolsa Chica restoration and the south Eucalyptus grove."

There is no present dispute that the CP wetland area constitutes 'wetland' under the Coastal Act. As submitted, the proposed amendment would designate that area Open Space Conservation. Restoring an existing wetland is beneficial, but cannot be considered adequate to offset loss of other wetland areas. The property owner indicates that "expansion" of the wetland would occur. However, the extent of any such expansion is not provided. This proposal would result in fill and loss of wetland, inconsistent with Section 30233 of the Coastal Act. Furthermore, no substantial benefit would accrue from the proposal. The CP wetland area is already recognized by all parties as an area that must be designated Conservation in order to find the amendment consistent with the Coastal Act. No development would be allowed within this area anyway. Thus the property owner's proposal would not result in any substantial habitat benefits.

The WP wetland does meet the Coastal Act and regulatory definition of a wetland. Furthermore, Section 30231 of the Coastal Act requires that all wetlands be maintained and where feasible restored, by preventing depletion of ground water supplies and substantial interference with surface water flow and by maintaining natural vegetation buffer areas. Future site development could not be found consistent with these Coastal Act policies if it did not maintain the WP wetland area.

In addition to land use designating all wetland area and necessary buffer area Open Space Conservation, additional measures must be incorporated into the LUP amendment for the subject site to assure that future development adjacent to the wetland and buffer areas and throughout the site does not adversely impact the wetland. For example, if no restrictions were placed on landscaping throughout the site, invasive plants within the

residential areas could invade the wetland areas, potentially displacing the wetland plants. In addition, pets from the residential development, if unrestricted, may enter the wetland area causing disruption. As proposed the LUP amendment does not include any site specific restrictions regarding potential impacts to continuation of the wetland, inconsistent with Section 30250 of the Coastal Act. However if modified to include a prohibition on invasive plants throughout the site, and a requirement for a domestic animal management plan, and fencing along the buffer/development interface, as part of the site specific LUP language, the amendment could be found consistent with Section 30250 of the Coastal Act. Specific suggested modifications to accomplish this are necessary to bring the proposed amendment into conformance with the Coastal Act.

The Commission finds that only if modified as suggested can the proposed land use plan amendment be found to be consistent with and adequate to carry out Sections 30233 and 30250 of the Coastal Act regarding wetlands.

3. Eucalyptus ESHA

The subject site contains environmentally sensitive habitat areas (ESHA). The trees within the “eucalyptus grove,” within and adjacent to the subject site’s western boundary are ESHA due to the important ecosystem functions they provide to a suite of raptor species.

Section 30240 requires that ESHA be protected from significant disruption and that only uses dependent upon the resource are allowed within ESHA. In addition, Section 30240 requires development adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade those areas. Section 30240 further requires that development be compatible with the continuance of the habitat area. This policy is carried over into the City’s certified LUP ESHA policies.

As proposed, ESHA area would be land use designated Open Space Parks, which would allow active park uses within the ESHA. In order to assure the ESHA is protected, in addition to precluding development within the ESHA, a buffer zone around the ESHA must be established. As proposed, the LUP amendment designates necessary buffer area Open Space Parks and Low Density Residential. The proposed designations would allow residential and park uses within the required buffer areas. Residential and park uses within ESHA and its buffer are inconsistent with Section 30240 of the Coastal Act. The land use designation that protects ESHA by limiting uses within ESHA to those allowed under Section 30240, and that prevents disruption of the habitat is Open Space Conservation. In order to assure that development adjacent to the ESHA does not significantly degrade or impair the continuance of the ESHA, the appropriate land use designation for both the ESHA and its buffer area is Open Space Conservation.

It is also worth noting that California gnatcatchers (*Poliioptila californica californica*), a species listed as “threatened” under the Endangered Species Act, are known to frequent the subject site, especially the western portion. Also, Southern tarplant (*Centromedia parryi* ssp. *Australis*), a California Native Plant Society “1b.1” species (seriously endangered in California), also exists at the site. However, the Southern tarplant exists in

scattered areas on the site. A focused survey documented the presence of 42 individuals, distributed in 6 locations. The Commission's staff ecologist, in a memo dated 12/19/06 (see exhibit N), concludes that neither the gnatcatcher habitat nor the Southern tarplant on the subject site meet the Coastal Act definition of ESHA. Nevertheless, regarding gnatcatcher habitat on-site, the staff ecologist's memo states, regarding gnatcatcher habitat on-site "it is worth noting that the areas of marginal habitat where gnatcatchers have been observed are not proposed for development." Regarding the Southern tarplant, the memo states: "In contrast to the habitats on the Bolsa Chica mesa, the scattered areas containing southern tarplant on the Parkside property do not appear to be significant habitat for this species, and it is my opinion that these areas do not meet the definition of ESHA under the Coastal Act. The proposed [in the related coastal development permit application] flood protection berm would cover an area that supported 5 plants in 2006 and the natural water treatment berms and ponds would [may] cover an area that supported 15 plants in 2006. Appropriate mitigation for this loss of coastal resources would be the planting of tarplant along the edge of wetland 'AP'." Thus, if the amendment is modified as suggested, the gnatcatcher's habitat on site will be retained within the Open Space Conservation designation. Furthermore, at the time the coastal development permit is processed, mitigation for impacts to the southern tarplant, which also is located within an area to be designated Open Space Conservation, will be considered. Anticipated impacts would be due to uses allowable within the Conservation designation.

The land use designations within the ESHA must be limited to the designation that allows only those uses dependent upon the ESHA. In addition, the land use designation within the buffer zone must be the designation that allows only those uses compatible with the continuance of the ESHA, and that will not degrade the ESHA. As proposed, the LUP amendment is not consistent with Section 30240 of the Coastal Act because the proposed land use designations within the ESHA and buffer area do not limit the uses to those consistent with Section 30240 of the Coastal Act. Therefore the amendment must be denied as proposed. However, if the proposed amendment were modified to land use designate all ESHA and necessary buffer area Open Space Conservation, the amendment would be consistent with Section 30240 of the Coastal Act.

It should be noted that construction of a flood protection levee within the ESHA buffer, provided it is the least environmentally damaging alternative, would not significantly degrade the ESHA. According to the related coastal development permit application for the subject site and the project proponent, the type of flood protection levee to be constructed would be a vegetated flood protection feature (VFPP), essentially a vegetated earthen levee with an internal sheet pile wall. The VFPP would not be expected to degrade the ESHA because 1) there would only be temporary construction-related impacts, 2) once constructed, the VFPP would be planted, thus providing habitat, and, 3) the VFPP would not require maintenance once constructed, thus intrusions into the ESHA buffer due to the VFPP would be limited only to those necessary during construction. For these reasons locating a flood protection levee such as the vegetated flood protection levee described above within the ESHA buffer would be consistent with Section 30240 of the Coastal Act regarding protection of ESHA.

In addition to land use designating all ESHA area and necessary buffer area Open Space Conservation, additional measures must be incorporated into the LUP amendment for the subject site to assure that future development adjacent to the ESHA and buffer areas and throughout the site does not adversely impact the ESHA. For example, if no restrictions were placed on landscaping throughout the site, invasive plants within the residential areas could invade the ESHA areas, potentially displacing the ESHA plants. In addition, pets from the residential development, if unrestricted, may enter the ESHA area causing disruption. As proposed, the LUP amendment does not include any site development restrictions intended to eliminate the site development's potential disruptions to the ESHA, inconsistent with Section 30240 of the Coastal Act. However if modified to include a prohibition on invasive plants throughout the site, and a requirement for a domestic animal management plan, and fencing as part of the site specific LUP language, the amendment can be found consistent with Section 30240 of the Coastal Act. Specific suggested modifications to accomplish this are necessary to find the proposed amendment consistent with the Coastal Act.

Therefore, the Commission finds that only as modified can the proposed amendment be found to be consistent with Section 30240 of the Coastal Act.

4. Water Quality

Section 30230 of the Coastal Act requires that marine resources be maintained, enhanced, and where feasible, restored. Section 30231 of the Coastal Act requires that the biological productivity and quality of coastal waters be protected. The City's certified LUP includes policies that reflect the requirements of 30230 and 30231 of the Coastal Act.

Development has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, sediments, metals, cleaning products, pesticides, and other pollutant sources.

The 50 acre project site is currently undeveloped, with the exception of farming activities. Under existing conditions, no runoff leaves the site during most rainfall events. However, installation of impervious surfaces and activities associated with residential development and related hardscape represent a potentially significant impact to water quality downstream of the project, which include the Inner and Outer Bolsa Bay, Muted Tidal Pocket wetlands, Huntington Harbour, and Anaheim Bay Wildlife Refuge. These downstream areas are likely to suffer increases in water quality impairment when site development produces greater volumes and velocities of runoff as well as introducing increased pollutant loads.

It is important that LUP language for the subject site clearly address potential adverse impacts arising due to post development runoff into the channel and significant water bodies downstream. This is especially true because little or no runoff currently leaves the site during most rainfall events. However, the proposed amendment does not include such

language. Without such language the LUP amendment is not consistent with the water quality policies of the Coastal Act.

The subject site represents an excellent opportunity to incorporate a natural treatment system, such as a wetland detention system. There are multiple benefits from natural treatment systems such as pollutant removal, groundwater recharge, habitat creation, and aesthetics. Furthermore, maintenance needs are typically more apparent and less frequent with natural/vegetative treatment systems and thus are more likely to remain effective than mechanical systems such as storm drain inserts and the like which can become clogged and otherwise suffer mechanical difficulties. If mechanical treatment control BMPs are not continually maintained they will cease to be effective, and consequently water quality protection would not be maximized.

Incorporating a natural treatment system, such as wetland detention pond system is feasible at the site. The site is an appropriate candidate for a natural treatment system because it is a large site unconstrained by existing development, limited lot size or limited by topography. There is plenty of space on the site to accommodate a wetland detention or similar type system while still allowing a reasonable development footprint. Moreover, because little or no drainage currently leaves the site, it is important that development of the site not result in creation of new adverse water quality impacts such as would result from increased runoff leaving the site. In order to achieve the goal of not creating new adverse water quality impacts, all dry weather flow would need to be retained on site. The best way to accomplish retention of dry weather flow on site typically is some type of natural treatment system. Furthermore, in order to protect water quality year round it is appropriate to impose a standard that any run off that leaves the site (i.e. during storm events) must meet. The generally accepted standard is a requirement to treat runoff from at least the 85th percentile storm event, with at least a 24 hour detention time. The current LUP amendment does not require these site specific water quality measures and standards. Therefore, there is no assurance that water quality will be protected. Consequently the amendment is not consistent with the water quality policies of the Coastal Act and must be denied.

In addition, although the existing LUP includes policies that require projects to incorporate water quality BMPs, none of the existing LUP policies express a preference for types of treatment control BMPs. The preferred option for treatment control BMPs is, first, a natural treatment system (e.g. bio-swales, vegetative buffers, constructed or artificial wetlands), then, second, a combination of natural treatment and mechanical systems or BMPs, and last, use of mechanical treatment systems or BMPs alone (e.g. site-specific water quality treatment plants, storm drain filters and inserts). In addition, application of appropriate site design and source control BMPs reduces the amount of runoff that would need treatment control measures. Thus, site design and source control BMPs should be considered first in order to adequately size any necessary treatment control BMPs.

In addition, the LUP does not contain any policy citing a hierarchy of preference for different types of BMPs. Without such an LUP policy, there is no guarantee they will be incorporated into projects when it is feasible to do so. Natural treatment systems, for the

reasons described above, provide better water quality protection, among other benefits. Consequently the amendment is not consistent with the water quality policies of the Coastal Act and must be denied. However, if the amendment is modified as suggested to include this in LUP policy language, it would be consistent with the water quality policies of the Coastal Act.

The use of permeable materials for paved areas in new developments is a site design and source control measure which can reduce the rate and volume of the first flush of stormwater runoff and can help to minimize or eliminate dry weather flow. The proposed amendment does not include any discussion on the benefits of incorporating permeable materials into the design of future projects. However, if the amendment is modified as suggested to include this in LUP policy language, it would be consistent with the water quality policies of the Coastal Act.

In addition, as proposed, the amendment does not include any requirements to minimize or eliminate dry weather flows through the use of site design and source control BMPs. Consequently, adverse water quality impacts due to dry weather flows are not minimized. However, if the amendment were modified as suggested to incorporate policy language addressing this measure, the amendment would be consistent with the water quality policies of the Coastal Act.

The current City of Huntington Beach LCP Policy 6.1.6 (paragraph 4) states that, the City shall continue implementation of the Municipal Non-Point [sic] Source National Pollution Discharge Elimination System (NPDES) standards program which is required by an order of the Santa Ana Regional Water Quality Control Board. The policy also states that the City will continue to require a Water Quality Management Plan for all applicable new development and redevelopment in the Coastal Zone. The Commission finds this policy should be modified to include the correct name and date of the permit and to incorporate this permit by reference into the Local Coastal Program. Updates to the NPDES permit (such as the update expected in 2007) should be submitted to the Executive Director for an LCP amendment.

While the Commission recognizes that the City's existing policies address water quality protection and improvement within the City, it also recognizes that there are additional, more specific steps that could be taken to further protect, restore and/or enhance the water quality of downstream sites (EGGW flood control channel, Bolsa Chica wetlands restoration area, Huntington Harbour, and Anaheim Bay Wildlife Refuge) that will be effected by runoff generated by development of the site. The proposed amendment could not be found consistent with Sections 30230 and 30231 of the Coastal Act, if feasible measures known to positively impact water quality were not included in language specific to the subject site as part of the current amendment proposal. The Commission's standard of review, which requires the preservation, protection, and enhancement of coastal resources including water quality, necessitates that the additional measures, outlined above, be imposed. Thus, the Commission finds that only if modified as suggested is the proposed amendment consistent with Sections 30230 and 30231 of the Coastal Act regarding water quality.

5. Public Access and Recreation

Coastal Act Section 30210 requires that public coastal access be maximized. Coastal Act Section 30252 requires that public access be maintained and enhanced through the provision of nonautomobile circulation within the development, adequate parking, and adequate recreational opportunities. These requirements are carried over and re-emphasized in the City's Land Use Plan public access policies. As proposed the LUP amendment would allow significant residential development to occur with no corresponding requirement for public access specific to the site. The site is located between the sea and the first public road.

Although a portion of the site is proposed to be designated park, nothing in the proposed amendment would assure that it would be available to the general public via public streets and trails. The certified LUP identifies a Class I bicycle path along the flood control channel levee at the subject site. However, the proposed amendment makes no reference to the suitability of a bicycle path at the subject site. If a future residential development at the site included gates or private streets, a significant public access opportunity would be lost. In addition, public parking in the area would increase public access opportunities to public resources including the park area, the bicycle path and to the Bolsa Chica area beyond, as well as, ultimately, to the coast. However, there is nothing in the LUP amendment that would require the residential streets to be open and available to the public. Nor is there any requirement for interior trail connections between Graham Street, the public park areas, and the bicycle path for the interior of the site. In addition, nothing in the proposed amendment or in the City's LUP requires that lower priority developments (such as residential) be phased to assure provision of associated recreation and public access (such as public trails, parks, and parking) occur prior to or concurrent with the lower priority development. Without such a phasing requirement, it is difficult to assure that Coastal Act high priority uses would occur in a timely manner, or possibly even at all.

However, the proposed amendment could be modified such that site specific language in the LUP include reference to the Class I bicycle path along the flood control channel levee, interior trail connections, public parking and access on residential streets. This would allow direct public access throughout the site and to the Bolsa Chica restoration area and to the beach beyond. Furthermore, the proposed amendment could be modified to incorporate a policy requiring phasing of recreation and public access uses prior to or concurrent with lower priority uses. Modifications to accomplish these goals would bring the proposed amendment into conformity with Coastal Act Sections 30210, 30212.5, 30213, 30223 and 30252 which require that public access and recreation be maximized and enhanced. Therefore, the Commission finds that only if modified as suggested is the proposed amendment consistent with Sections 30210 and 30252 of the Coastal Act.

The Commission recognizes there may be changes to the final acreage figure for the area designated Open Space – Parks. The land use designation Open Space – Parks may be applied to the site in areas where all the following occur: 1) the uses allowed under the OS-P designation would not have any adverse impacts on coastal resources, 2) in areas

not land use designated Open Space – Conservation, and, 3) such a designation is otherwise consistent with the policies of the certified LCP and with the Coastal Act. If there are changes to the acreage amount of Open Space – Parks, that change will not require a separate amendment to the LCP, provided none of the area conflicts with the Conservation designation or with protection of coastal resources.

6. Visual Resources

Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. The subject site offers the opportunity to provide public views from the site to the Bolsa Chica wetlands area and toward the ocean beyond. The southwest corner of the site is an excellent location for providing public views to and along the coast and scenic areas, as required by Section 30251. The location also works well with the anticipated bikeway along the flood control channel. However, the proposed LUP amendment does not include any discussion regarding provision of public view points in association with development of the site.

Future residential development of the site is expected to include a wall separating residential development adjacent to the flood control levee from the anticipated public bicycle path along the top of the levee. If such a wall is proposed in the future, it could create adverse impacts to public views along the bicycle path. However, adverse impacts could be minimized by incorporating measures such as open fencing/wall, landscaped screening, use of an undulating or off-set wall footprint, or decorative wall features (such as artistic imprints, etc.), or a combination of these measures. In addition, any such wall should be located upon the private property for which it is intended to provide privacy.

The proposed amendment does not provide language to address site specific visual impacts and does not assure that potential visual resources will be protected at the time the site is proposed for development. Therefore the proposed amendment is inconsistent with Section 30252 of the Coastal Act regarding protection of visual resources within the coastal zone and must be denied. However, if the amendment were modified to incorporate measures specific to the site that protect and enhance public views, the amendment would be consistent with Section 30252 of the Coastal Act regarding protection of public views.

7. Archaeological Resources

Coastal Act Section 30244 requires that any impacts to significant archaeological resources be reasonably mitigated. The City's certified LUP includes policies which require, among other things, identification of resources and mitigation of any impacts. Significant archaeological resources are known to exist in the project vicinity, and may occur on the subject site.

However, the proposed LUP amendment does not include a specific requirement to avoid and/or mitigate archaeological impacts, even though the site is known to be in a potentially significant archaeological area. Without a cross reference in the site specific area

discussion of the proposed LUP amendment to the archaeological policies in the LUP, there is no assurance that the potential for archaeological resources to occur on the site will be recognized in conjunction with future development proposals. If the potential for archaeological resources at the site is not recognized in the proposed LUP amendment for the site, application of the policies cited above may be overlooked. The proposed LUP amendment, which specifically addresses the subject site, provides the appropriate opportunity to make clear that archaeological resources may be present on this site, and therefore these specific policies must be applied.

If the amendment were modified to include a cross reference to the archaeological policies of the LUP, adverse impacts may be avoided and reasonable mitigation for unavoidable impacts could be implemented in conjunction with future site development, consistent with Section 30244 of the Coastal Act. Therefore, the Commission finds that only if modified as suggested, is the proposed amendment consistent with Section 30244 of the Coastal Act which requires that reasonable mitigation be required for adverse impacts to archaeological resources.

8. Hazards

Section 30236 of the Coastal Act states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Coastal Act Section 30253 state, in pertinent part:

New Development shall:

- (2) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (3) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The proposed LUP amendment would designate much of the subject site for residential development land use. The Commission's staff geologist has reviewed a great deal of technical information submitted in conjunction with the proposed LUP amendment and related coastal development permit application. Potential geotechnical and hydrological issues are identified in the staff geologist's memo.

Residential development of the site carries with it certain risks. Although information submitted relative to the related coastal development permit application indicates there are feasible mitigation measures available to minimize the level of risk involved with site development, there is no specific requirement in the proposed amendment to assure that measures necessary for risk reduction would be incorporated into future site development. Without such requirements in the amendment, there is no assurance that risks will be minimized as required by Section 30253 of the Coastal Act. However, if the amendment were modified to include such a requirement, it would be consistent with Section 30253 of the Coastal Act.

The subject site and much of the surrounding area are susceptible to tidal flooding. Tidal flooding could occur when extreme high tides occur concurrently with storm surge events. According to some studies, the existing tidal flooding risk was increased with the opening of the ocean inlet into the Bolsa Chica Restoration area. Regardless of the cause of the flooding, high tides and storm surge will create tidal flooding. The worst case scenario would occur when high tide and storm surge occurs during failure of the levees of the lower reaches of the East Garden Grove Wintersburg Flood Control Channel (EGGWFC) (which is possible as the levees are not FEMA certified). Under any of these scenarios, up to 170 acres of inland developed area would be flooded. Consequently, contemplation of any development of the subject site must address this flooding issue.

With or without development of the subject site, the inland 170 acres of existing development must be protected from flood hazard. The path the tidal flooding would follow unavoidably crosses the subject site. The only way to adequately insure protection of the inland 170 acres of existing development is to install a flood protection levee (a.k.a. VFPP) on the subject site or to the southwest of the subject site within the Bolsa Chica "Pocket Wetlands" between the EGGWFCC and the Bolsa Chica mesa. Protection of the inland 170 acres would also protect the 50 acre subject site from flooding.

The property owner has indicated, in documents submitted with the related coastal development permit application, that a vegetated flood protection feature (VFPP) is proposed in the southwestern part of the site. In this area, the EGGWFCC is approximately 11 feet above sea level and the bluff at the western site boundary raises some 40 feet above sea level. There is a gap in elevation between the EGGWFCC levee and the bluff in the area of the former county parcel. A flood protection levee in this location could effectively capture tidal floods if it is constructed to an elevation above the expected flood flow. The existing EGGWFCC levee in the area adjacent to the subject site is expected to be reconstructed to meet FEMA certification standards and would have an elevation of 11 feet above sea level (the existing levee's elevation is also 11 feet above sea level). If a flood protection levee were constructed to the same elevation, flood waters would be prevented from flooding the subject site as well as the additional 170 inland acres. With or without development of the proposed site, some form of flood protection is necessary to minimize risks to life and property in areas of high flood hazard and to assure stability and structural integrity, and not contribute significantly to destruction of the surrounding area. As it happens, the subject site provides the optimum location for the

flood protection levee necessary to minimize risk to life and property in the 170 developed acres inland of the subject site. The flood waters could be stopped at the relatively narrow area between the site's western bluff and the northerly levee of the EGGWFCC.

Construction of some type of flood protection levee would be necessary with development of the subject site. However, such a feature would be necessary even without site development. The flood protection levee proposed as part of the related coastal development permit application, would extend from the north levee of the EGGWFCC to the river bluff to the north, with an elevation 11 feet above sea level. The flood protection levee, expected to be constructed as an earthen levee with an internal sheet pile wall, would serve an important function. Without construction of the flood protection levee, even with reconstruction of the north levee of the EGGWFCC along the subject site, flooding of 170 inland acres (including the subject site) would result, during either a tidal surge or a levee failure downstream of the subject site. The 170 acre inland area is developed with approximately 800 homes. Floodwater depth in some homes, it is estimated, could reach as high as three to five feet.

However, construction of a flood protection levee on the site in the location described above would be adequate to assure structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. In addition, construction of the flood protection levee would minimize risks to life and property from flood hazard. In order for the flood protection levee to function effectively, it would have to be placed within the site's necessary buffer areas. However, as described previously, a flood protection levee in the buffer area may be an allowable use within a buffer provided it is the least environmentally damaging feasible alternative.

Furthermore, the construction of the flood protection levee in the location identified above may eliminate the need for the flood control levee downstream of the flood wall. If the flood control levee downstream of the flood wall is not reconstructed, potential impacts to wetlands in the CP wetland area can be avoided. The appropriateness of reconstructing the downstream levee area will be considered when the related coastal development permit is processed.

Additionally, the proposal as modified, can be found consistent with Section 30236 of the Coastal Act because a flood protection levee in the location identified above has been found to be necessary to protect existing structures and the best mitigation measures feasible have been incorporated.

The question of whether the bluff along the western edge of the property should be considered a "coastal bluff" has been raised. The Commission's staff geologist has evaluated the bluff's status. The staff geologist's evaluation is contained in a memorandum attached as exhibit P. The subject bluff was carved by the ancestral Santa Ana river as it meandered across the Bolsa Chica lowlands. Assertions have been made that the bluff was subject to marine erosion within the past 200 years based on an 1873 T-sheet that shows tidal channels adjacent to the toe of the bluff. The staff geologist's response to these assertions is: "I concur that there is strong evidence that there were tidal

wetlands in the Bolsa Chica lowlands prior to dike construction in the early twentieth century, but tidal wetlands generally are not the site of extensive marine erosion. Indeed, they are commonly depositional, not erosional, and serve as an efficient buffer from marine erosion.” The staff geologist concludes: “In summary, I believe that the bluff at the Shea Home property is best described as a river bluff and is not a coastal bluff in a genetic or geomorphic sense.” Thus, the Commission finds that the bluff on the subject site is not a “coastal bluff.”

For the reasons described above, the Commission finds that only if modified can the proposed amendment be found to be consistent with Section 30253 of the Coastal Act which requires that risks to life and property be minimized and that development assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. Furthermore, the Commission finds that the proposed amendment as modified is consistent with Section 30236 of the Coastal Act.

9. Priority of Use

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

The LUP amendment does not propose to designate any portion of the site visitor serving commercial. Generally, in the City of Huntington Beach, the areas recognized as best for visitor serving commercial development are the areas along Pacific Coast Highway, and adjacent to and inland of the pier, and areas within and around Huntington Harbour. The subject site is surrounded on three sides by existing single family residences, and does not lend itself to visitor serving commercial development. Moreover, the LUP amendment as proposed and as amended will provide a Class I bicycle path, a public view area, public park area, and interior trails as well as public parking along the residential streets. Such uses constitute lower cost visitor serving recreational uses. As modified the recreational and public access provisions will be constructed prior to or concurrent with the residential uses. Therefore, the Commission finds that the proposed LUP amendment is consistent with Sections 30213 and 30222 of the Coastal Act which requires visitor serving commercial recreational facilities have priority over residential development and encourages provision of lower cost public recreational facilities.

10. Conclusion

As proposed, the Land Use Plan amendment contains significant deficiencies with regard to consistency with the Coastal Act. As proposed, the amendment cannot be found consistent with Sections 30210 and 30252 regarding maximizing and enhancing public access, 30251 regarding protection of public views, 30233 and 30250 regarding wetlands, 30240 regarding ESHA, 30244 regarding archaeological resources, and 30230 and 30231 regarding water quality of the Coastal Act. However, if the proposed amendment were modified as suggested in Section II of this staff report, the amendment would be consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that only if modified is the proposed amendment consistent with the Chapter 3 policies of the Coastal Act.

G. Denial of the Implementation Plan Amendment as Proposed

1. Incorporation for Findings for Denial of Land Use Plan as Submitted and Approval of the Land Use Plan if Modified

The findings for denial of the Land Use Plan as submitted and approval if modified are incorporated as though fully set forth herein.

2. Implementation Plan Amendment Description

The proposed Implementation Plan amendment would provide zoning for the subject site. Currently the subject site is comprised of an approximately 40 acre area of deferred certification, an approximately 5 acre area zoned Open Space Parks (OS-P), and an approximately 5 acre recently annexed, un-zoned area. The proposed amendment would modify Sectional District Map 28-5-11 (DMZ) to reflect the proposed zoning. The proposed zoning for the subject site is (see Exhibit F for the proposed zoning map):

Zone		Acres
RL-FP2-CZ	Low Density Residential-Floodplain Overlay-Coastal Zone Overlay	38.4
OS-PR-CZ	Open Space-Parks and Recreation-Coastal Zone Overlay	8.2
CC-FP2-CZ	Coastal Conservation-Floodplain Overlay- Coastal Zone Overlay	3.3

Only the map change is proposed in the Implementation Plan amendment. No change to any text is proposed.

The standard of review for amendments to a certified Implementation Plan is whether the Implementation Plan, as modified, would be consistent with and adequate to carry out the policies of the certified Land Use Plan, as amended.

3. Wetlands

Policy C 6.1.20 of the City's certified Land Use Plan (LUP) states:

Limit diking, dredging, and filling of coastal waters, wetlands, and estuaries to the specific activities outline in Section 30233 and 30607.1 of the Coastal Act and to those activities required for the restoration, maintenance, and/or repair of the Municipal Pier and marina docks. Conduct any diking, dredging and filling activities in a manner that is consistent with Section 30233 and 30607.1 of the Coastal Act.

Section 30233 limits development within wetlands to seven specifically enumerated uses. Neither residential development nor active parks are uses specified in Section 30233 of the Coastal Act.

In addition, Policy C 7.1.4 of the LUP states, in pertinent part:

Require that new development contiguous to wetlands or environmentally sensitive habitat areas include buffer zones.

As described in greater detail in the findings for the Land Use Plan, the amendment proposes to zone wetland areas low density residential and open space park. The proposed zones would result in residential uses and active park uses within wetland areas. These uses are not consistent with the LUP policies cited above. In addition, the proposed zoning would not be consistent with the land use plan designation as modified by the suggested modifications to the proposed Land Use Plan amendment. As modified the land use designation for the wetland areas is Open Space Conservation. Therefore, the Commission finds that, as proposed, the Implementation Plan amendment is inconsistent with and inadequate to carry out the land use plan, specifically with LUP policy C 6.1.20 which limits the uses that may occur within wetlands. The IP amendment is also inconsistent with the land use designation for the site as modified by the suggested modifications to the proposed land use plan amendment.

Furthermore, LUP policy C 7.1.4 requires buffer zones for development adjacent to wetlands. The appropriate buffer area for the wetlands at the subject site is described in the findings for the denial of the land use plan amendment as proposed. In addition, the proposed zoning would not be consistent with the land use plan designation as modified by the suggested modifications to the proposed Land Use Plan amendment. As modified the land use designation for the wetland areas and the required buffer area is Open Space Conservation. Therefore, the Commission finds that, as proposed, the Implementation Plan amendment is inconsistent with and inadequate to carry out the land use plan, specifically with LUP policy C 7.1.4 which requires buffer areas for development adjacent to wetlands. The IP amendment is also inconsistent with the land use designation for the site as modified by the suggested modifications to the proposed land use plan amendment.

For these reasons the Commission finds that the proposed Implementation Plan

amendment is inconsistent with and inadequate to carry out the policies and land use designations of the certified Land Use Plan concerning wetlands and therefore must be denied.

4. **Eucalyptus ESHA**

Policy C 7.1.2 of the City's certified Land Use Plan states:

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.

In the event that development is permitted in an ESHA area pursuant to other provisions of this LCP, a "no-net-loss" policy (at a minimum) shall be utilized.

Policy C 7.1.3 of the City's certified Land Use Plan states:

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.

In addition, Policy C 7.1.4 of the LUP states, in pertinent part:

Require that new development contiguous to wetlands or environmentally sensitive habitat areas include buffer zones.

As described in greater detail in the findings for the Land Use Plan, the amendment proposes to zone ESHA open space park. The proposed zone would result in active park uses within ESHA areas. Active park use is not a use dependent on the resource. Thus, the uses allowed by the proposed zoning are not consistent with the LUP policies cited above. In addition, the proposed zoning would not be consistent with the land use plan designation as modified by the suggested modifications to the proposed Land Use Plan amendment. As modified, the land use designation for the ESHA areas is Open Space Conservation. Open Space Parks does not adequately implement the Conservation zoning. Therefore, the Commission finds that, as proposed, the Implementation Plan amendment is inconsistent with and inadequate to carry out the land use plan, specifically with LUP policy C 6.1.20 which limits the uses that may occur within ESHA and requires that ESHA be protected against any significant disruption of habitat values. The IP amendment is also inconsistent with the land use designation for the site as modified by the suggested modifications to the proposed land use plan amendment.

Furthermore, LUP policy C 7.1.4 requires buffer zones for development adjacent to ESHA. The appropriate buffer area for the ESHA at the subject site is described in the findings for the denial of the land use plan amendment as proposed. In addition, the proposed zoning would not be consistent with the land use plan designation as modified by the suggested

modifications to the proposed Land Use Plan amendment. As modified, the land use designation for the ESHA areas and the required buffer area is Open Space Conservation. Therefore, the Commission finds that, as proposed, the Implementation Plan amendment is inconsistent with and inadequate to carry out the land use plan, specifically with LUP policy C 7.1.4 which requires buffer areas for development adjacent to ESHA. The IP amendment is also inconsistent with the land use designation for the site as modified by the suggested modifications to the proposed land use plan amendment.

For these reasons the Commission finds that the proposed Implementation Plan amendment is inconsistent with and inadequate to carry out the policies and land use designations of the certified Land Use Plan concerning ESHA protection and therefore must be denied.

H. Approval of the Implementation Plan Amendment if Modified

1. Incorporation for Findings for Denial of Land Use Plan as Submitted and Approval of the Land Use Plan if Modified

The findings for denial of the Land Use Plan as submitted and approval if modified are incorporated as though fully set forth herein.

2. Incorporation of Findings for Denial of Implementation Plan as Submitted

The findings for denial of the Implementation Plan as submitted are incorporated as if fully set forth herein.

3. Wetland

If Sectional District Map 28-5-11 (DMZ) were modified such that the proposed zoning corresponds to the land use designations as modified, specifically such that all wetland areas on site and the required buffer areas are zoned Coastal Conservation, then the Implementation Plan amendment, specifically the zoning map, would be consistent with and adequate to carry out the policies and land use designations of the certified Land Use Plan, as amended. Therefore the Commission finds that only if modified as suggested, is the proposed Implementation Plan amendment consistent with and adequate to carry out the certified Land Use Plan, as amended.

4. ESHA

If Sectional District Map 28-5-11 (DMZ) were modified such that the proposed zoning corresponds to the land use designations as modified, specifically such that all ESHA areas on site and the required buffer areas are zoned Coastal Conservation, then the Implementation Plan amendment, specifically the zoning map, would be consistent with and adequate to carry out the policies and land use designations of the certified Land Use

Plan, as amended. Therefore the Commission finds that only if modified as suggested, is the proposed Implementation Plan amendment consistent with and adequate to carry out the certified Land Use Plan, as amended.

5. Conclusion – Approval of the Implementation Plan Amendment if Modified

As proposed, the Implementation Plan amendment contains significant deficiencies with regard to consistency with and adequacy to carry out the policies and land use designations of the certified Land Use Plan, as amended. As proposed, the amendment cannot be found consistent with or adequate to carry out the policies of the certified Land Use Plan regarding allowable uses in wetland areas and ESHAs; nor can it be found consistent with or adequate to carry out the policy that requires buffer zones for development adjacent to wetlands and ESHA. However, if the proposed amendment were modified as suggested in Section II of this staff report, the amendment would be consistent with and adequate to carry out the certified Land Use Plan, as amended. Therefore, the Commission finds that only if modified is the proposed amendment consistent with and adequate to carry out the certified policies and land use designations of the Land Use Plan, as amended.

IV. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) - exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program (LCP). Instead, the CEQA responsibilities are assigned to the Coastal Commission. However, 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 Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an EIR for each LCP. Nevertheless, the Commission is required in approving an LCP submittal to find that the LCP does conform with the provisions of CEQA, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended IP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. Sections 13542(a), 13540(f), and 13555(b). The City of Huntington Beach LCP amendment 1-06 consists of an amendment to both the Land Use Plan (LUP) and the Implementation Program (IP).

As outlined in this staff report, the LUP amendment is not consistent with the Chapter 3 polices of the Coastal Act regarding public access and recreation, wetland, ESHA, marine resources, and land resources, as proposed. And also as outlined in this staff report, the proposed IP amendment is inconsistent with the wetland and ESHA protection policies of the Coastal Act. However, if modified as suggested, the amendment will be consistent

with the public access and recreation, wetland, ESHA, marine resource, and land resource policies of the Coastal Act and the Land Use Plan, as amended. Thus, the Commission finds that the proposed LUP amendment, as modified, meets the requirements of and conforms with the Chapter 3 policies of the Coastal Act. In addition, the Commission finds that the IP amendment, if modified as suggested, is in conformity with and adequate to carry out the land use policies of the certified LUP. Therefore, the Commission finds that approval of the LCP amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LCP amendment request 1-06 if modified as proposed herein.

Use the two links below to go to parts one and two of the exhibits.

HNB LCPA 1-06 Parkside

EXHIBITS

- A. Regional Location Map
- B. Vicinity Map
- C. Huntington Beach City Council Resolut
- D. City of Huntington Beach Submittal Let
- E. Proposed Land Use Plan Map
- F. Proposed Zoning Map
- G. Location of Subject Site Relative to Bolsa Chica Wetlands
- H. Area of CP wetlands and Southern ESHA
- I. Mark Johnsson, Commission Staff Geologist's Memo (Shea Homes) 7/24/06
- J. Letters from County of Orange re: Pedestrian/Bicycle Path
- K. John Dixon, Commission Staff Ecologist's Memo Wetlands 7/27/06
- L. CCC Staff Recommended ESHA/Wetland/Buffer OS-Conservation Areas
- M. John Dixon, Commission Staff Ecologist's Memo Raptors, 7/28/06
- N. John Dixon, Commission Staff Ecologist's Memo Gnatcatchers & Southern Tarplan, 12/19/06
- O. John Dixon, Commission Staff Ecologist's Memo, Parkside Estates, 1/25/07
- P. Mark Johnsson, Commission Staff Geologist's Memo Bluff, 1/22/07
- Q. Mark Johnsson, Commission Staff Geologist's Memo Tidal Flooding, 1/22/07
- R. Letter from Ron Metzler, Shea Homes, 1/23/07
- S. City of Huntington Beach letter re Levee Repair, 1/23/07
- T. Shea Homes, Conceptual Cross Sections, Levee Repair Near WP
- U. Letter from FEMA re Levee Repair, 1/25/07
- V. Letter from Ron Metzler, Shea Homes, re FEMA letter, 1/26/07
- W. Bolsa Chica Land Trust Letter, 8/3/07
- X. Letters Received in Support of Amendment/Related Project
- Y. Letters Received in Opposition to Amendment/Related Project
- Z. John Dixon, Commission Staff Ecologist's Memo, 1/31/07
- AA. Ex-Parte Communication Forms