

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
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SAN DIEGO, CA 92108-4402  
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# Th 16b

## Addendum

November 2, 2018

To: Commissioners and Interested Persons

From: California Coastal Commission  
San Diego Staff

Subject: Addendum to **Item Th 16b**, Coastal Commission Permit Application **#6-18-0276 (San Elijo Lagoon Conservancy)**, for the Commission Meeting of November 8, 2018.

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The purpose of this addendum is to revise Special Condition No. 3 – Open Space and Conservation Deed Restriction to require the recordation of such restriction if the existing conservation easement becomes at risk of being amended or revoked and to add a new Special Condition No. 6 which requires any future development of the site be subject to Commission review through an amendment to the this permit. The addendum also provides better description of the certified Land Use/Zoning designations on the site. Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by a ~~strike through~~ and additions shall be underlined:

1. Modify the second paragraph of the Staff Summary as follows:

**Special Condition No. 1** requires revisions to the trail system to avoid ESHA, **Special Condition No. 2** requires a habitat restoration and monitoring plan, **Special Condition No. 3** requires that if the existing conservation easement on the property becomes at risk of being amended or revoked, an open space and conservation deed restriction will be placed over the trail system, **Special Condition No. 4** prohibits development from occurring during the nesting season, and to address potential impacts to water quality, **Special Condition No. 5** requires submittal of a final Construction BMPs Plan and requires any graded material be exported to a location outside the coastal zone.

2. Modify Page No. 8 – Special Condition No. 3 – as follows:

**3. Future Open Space and Conservation Deed Restriction.** If the existing Conservation Easement (Recording No. 2014-0567337) is at risk of being amended or revoked, the permittee shall record an Open Space and Conservation Deed Restriction as follows:

- (a) No development, as defined in Section 30106 of the Coastal Act, shall occur on the site except for a public trail system for passive recreation. Development of the trail system may include: a monument and associated artwork as proposed in plans submitted by Richard J Risner stamped as received on April 12, 2018; trail signage, benches, trash cans, viewing decks, post and cable fencing. Restoration activities are allowed according to the Mitigation and Monitoring Plan required by Special Condition 2 of this permit.
  - (b) Prior to revocation of the easement, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space area. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area prepared by a licensed surveyor based on an on-site inspection of the open space area.
  - (c) The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed.
  - (d) The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the landowner in perpetuity.
3. Add a new Special Condition No. 6 to the list of special conditions ending on Page 10 of the staff report, as follows:

Future Development Restriction. This permit is only for the development described in Coastal Development Permit No. 6-18-0276. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, a change in the density or intensity of use land, shall require an amendment to Permit No. 6-18-0276 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government. Additionally, any change in the conservation easement referenced in Special Condition No. 3 above shall require a report to the Executive Director for determination of whether an amendment is legally required.

4. Modify the first paragraph of Page 16 as follows:

In addition, the property is currently protected as open space by a conservation easement held by the City of Solana Beach. However, should that easement become in danger of being amended or revoked, Special Condition No. 3 requires the entire site to be placed under an open space restriction to ensure no development occurs, with the exception of trail construction and restoration activities, and requires the permit to be recorded as a deed restriction against the property to ensure that the open space is preserved in perpetuity. Finally, Special Condition No. 6 requires that any future

development on site be reviewed by the Coastal Commission through an amendment to the subject CDP.

5. Modify the second paragraph on Page 19 as follows:

The subject site is located in the City of Solana Beach, which has a certified LUP, but no certified LCP. Thus, Chapter 3 of the Coastal Act remains the legal standard of review and Solana Beach's LUP policies are used as guidance. The certified land use designation on the site is "vacant" with a Visitor-Serving Commercial (VSCO I) overlay. The VSCO 1 overlay is intended to reserve sufficient land exclusively for high-priority commercial recreation and visitor serving uses. However, in addition to these types of uses the certified LUP identifies that this specific site may also be developed with open space or public park use compatible with the adjacent resources. The site is zoned ~~and designated~~ for open space uses, and, therefore, the proposed trail system is consistent with both the land use ~~this~~ designation and zoning. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the Solana Beach LUP. Approval of the project, as conditioned, will not prejudice the ability of the City of Solana Beach to continue to implement its certified LUP, nor to implement an LCP in the future.

6. Add the following to the end of Appendix A – substantive File Document list:

- Conservation Easement Agreement between the San Elijo Lagoon Conservancy and the City of Solana Beach Document No. 2014-0567337

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# Th 16b

Filed:	4/12/18
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Staff:	T. Ross-SD
Staff Report:	10/18/18
Hearing Date:	11/7-9/18

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 6-18-0276

**Applicant:** San Elijo Lagoon Conservancy

**Agent:** Doug Gibson

**Location:** Northeast of South Coast Highway 101, north of Lomas Santa Fe Drive and south of San Elijo Lagoon, Solana Beach, San Diego County (APN 263-011-32)

**Project Description:** Construction of a 2,860 linear feet trail system including benches, viewing deck and 2.35-acres of native habitat restoration on a 3.44-acre site.

**Staff Recommendation:** Approval with Conditions

## SUMMARY OF STAFF RECOMMENDATION

The proposed development includes conversion of a site historically developed with various commercial uses to a mixture of public access trails and native habitat restoration. The project also includes public art, signage, post and cable fencing, temporary irrigation, and grading. The project will create an important new public access and recreational facilities. However, although largely disturbed, the site does currently have some native habitat, including mixed Diegan coastal sage scrub (DCSS), and Orcutt's pincushion, a rare plant species. The project has been revised to avoid any impacts to the Orcutt's pincushion, as its habitat is considered ESHA. However, creation of the trail system will result in unavoidable impacts to approximately 1.14 acres of mixed Diegan coastal sage scrub. The Commission's ecologist has reviewed the biological evaluation of the site, and determined that the DCSS is

mostly very poor condition, and thus the associated habitat is not ESHA. Nevertheless, the coastal sage scrub is native vegetation that is a valuable part of the natural ecosystem. In order to mitigate for impacts to DCSS, the applicant has proposed to provide a total of 3.52 acres of mitigation in form of creation and substantial restoration of DCSS and several other habitat types both on and off-site, thus ensuring that all impacts to native habitat are mitigated consistent with the resource protection policies of the Coastal Act and the City of Solana Beach certified Land Use Plan.

**Special Condition No. 1** requires revisions to the trail system to avoid ESHA, **Special Condition No. 2** requires a habitat restoration and monitoring plan, **Special Condition No. 3** requires that an open space and conservation deed restriction be placed over the trail system, **Special Condition No. 4** prohibits development from occurring during the nesting season, and to address potential impacts to water quality, **Special Condition No. 5** requires submittal of a final Construction BMPs Plan and requires any graded material be exported to a location outside the coastal zone.

Therefore, Commission staff recommends **approval** of coastal development permit application 6-18-0276 as conditioned.

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### APPENDICES

Appendix A – Substantive File Documents

### EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Aerial of Site Location](#)

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[Exhibit 4 – Site Plans](#)

[Exhibit 5 – Map of Existing and Proposed Trails](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-18-0276 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

*The Commission hereby approves coastal development permit 6-18-0276 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit 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 development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

#### 1. Submittal of Revised Final Plans.

**PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, final project plans. Said plans shall be in substantial conformance with the plans submitted by Richard J Risner stamped as received on April 12, 2018, but shall be revised consistent with the conceptual plan received on August 7, 2018 to include the following:

- (a) The project shall be redesigned to avoid all impacts to the population of Orcutt's pincushion located on the western portion of the site, including, as feasible, separation from the trail.

The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

#### 2. Mitigation and Monitoring Plan.

**PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, a final detailed Mitigation and Monitoring Plan for all impacts to sensitive biological resources. The plan shall include the following:

- (a) Preparation of detailed site plans identifying all impacted upland habitat areas including the 1.14 acres of proposed impacts to Diegan coastal sage scrub. Both temporary and permanent impacts shall be included in this calculation.
- (b) All impacts to upland habitat (temporary and permanent) shall be mitigated through restoration or enhancement at not less than a 3:1 mitigation ratio. In addition, a detailed site plan of the mitigation areas shall be included.



- (c) All land not allocated for development that is currently vegetated with sensitive habitat shall be restored with native vegetation.
  
- (d) A Restoration component shall be prepared as part of the plan by a qualified restoration ecologist and shall at a minimum include the following:
  - i. A baseline assessment, including photographs, of the current physical and ecological condition of the proposed restoration sites, including, as appropriate, a wetland delineation conducted according to the definitions in the Coastal Act (Pub. Resources Code, § 30121) and the Commission’s Regulations (Cal. Code of Regs., tit. 14, § 13577), a description and map showing the areas and distribution of vegetation types, and a map showing the distribution and abundance of sensitive species. Existing vegetation, wetlands, and sensitive species shall be depicted on a map that includes the footprint of the proposed restoration.
  
  - ii. A description of the goals of the restoration plan, including, as appropriate, topography, hydrology, vegetation types, sensitive species, and wildlife usage.
  
  - iii. A description of planned site preparation and invasive plant removal;
  
  - iv. A restoration plan including the planting palette (seed mix and container plants), planting design, source of plant material, plant installation, erosion control, irrigation, and remediation. The planting palette shall be made up exclusively of native plants that are appropriate to the habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used.
  
  - v. A plan for documenting and reporting the physical and biological “as built” condition of the mitigation sites within 30 days of completion of the initial restoration activities. This is a simple report describing the field implementation of the approved restoration program in narrative and photographs, and reporting any problems in the implementation and their resolution. The “as built” assessment and report shall be completed by a qualified biologist.
  
  - vi. A plan for interim monitoring and maintenance, including:
    - A. A schedule;
    - B. Interim performance standards;
    - C. A description of field activities;
    - D. A monitoring period of not less than 5 years; and
    - E. Provision for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the “as-built” report. Each report shall be cumulative and shall summarize all previous results. Each report shall document the condition of the restoration with photographs taken from the same fixed points in the same directions. Each report shall

also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the interim performance standards and final success criteria.

- vii. Final Success Criteria for each habitat type, including, as applicable:
  - A. species diversity;
  - B. total ground cover of vegetation;
  - C. vegetative cover of dominant species and definition of dominants (e.g., Army Corps of Engineers “50/20” rule, enumeration, species with greater than 4 threshold of abundance, etc.);
  - D. wildlife usage;
  - E. hydrology; and
  - F. presence and abundance of sensitive species or other individual “target” species.
  
- viii. The method by which success will be judged, including:
  - A. Type of comparison. Possibilities include comparing a census of the restoration sites to a fixed standard derived from literature or observations of natural habitats, comparing a census of the restoration sites to a sample from a reference site, comparing a sample from the restoration sites to a fixed standard, or comparing a sample from each of the restoration sites to a sample from a reference site;
  - B. Identification and description, including photographs, of any reference sites that will be used;
  - C. Test of similarity. This could simply be determining whether the result of a census was above a predetermined threshold. Generally, it will entail a one- or two-sample t-test;
  - D. The field sampling design to be employed, including a description of the randomized placement of sampling units and the planned sample size;
  - E. Detailed field methods;
  - F. Specification of the maximum allowable difference between the restoration value and the reference value for each success criterion;
  - G. Where a statistical test will be employed, a statistical power analysis to document that the planned sample size will provide adequate statistical power to detect the maximum allowable difference. Generally, sampling should be conducted with sufficient replication to provide 90% power with  $\alpha=0.10$  to detect the maximum allowable difference. This analysis requires an estimate of the sample variance based on the literature or a preliminary sample of a reference site. Power analysis software is available commercially and on the world wide web (e.g., <http://www.stat.uiowa.edu/~rlenth/Power/index.html>).
  - H. A statement that final monitoring for success will occur after at least three years with no remediation or maintenance activities other than weeding.

ix. Provision for submission of a final monitoring report to the Executive Director at the end of the final monitoring period. The final report must be prepared by a qualified restoration ecologist. The report must evaluate whether the restoration site conforms to the goals and success criteria set forth in the approved final restoration program.

x. Provision for possible further action. If the final report indicates that the restoration project has been unsuccessful, in part or in whole, based on the approved success criteria, the applicant shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved success criteria. The revised restoration program shall be processed as an amendment to this coastal development permit unless the Executive Director determines that no permit amendment is legally required.

The permittee shall undertake mitigation and monitoring in accordance with the approved final, revised upland mitigation plan. Any proposed changes to the approved final, revised plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. **Open Space and Conservation Deed Restriction.**

- (a) No development, as defined in Section 30106 of the Coastal Act, shall occur on the site except for a public trail system for passive recreation. Development of the trail system may include: a monument and associated artwork as proposed in plans submitted by Richard J Risner stamped as received on April 12, 2018; trail signage, benches, trash cans, viewing decks, post and cable fencing. Restoration activities are allowed according to the Mitigation and Monitoring Plan required by Special Condition 2 of this permit.
- (b) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space area. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area prepared by a licensed surveyor based on an on-site inspection of the open space area.
- (c) The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed.
- (d) The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the landowner in perpetuity.

4. **Sensitive Species/Timing.** To avoid potential impacts to breeding activities of the California gnatcatcher, migratory songbirds, and other bird species associated with the adjacent sensitive open water, wetland, riparian, and coastal sage scrub habitat, no construction of the trail and related development, including tree removal, is allowed from February 15 to August 31 of any year, unless approved in writing in advance by the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service.
  
5. **Construction BMPs Plan.**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, a Construction Best Management Practices plan. The plan should be in conformance with all of the following requirements:

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion. To avoid disposal of construction materials, debris, or waste into the ocean, appropriate catch basins shall be installed prior to commencement of construction.
  
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project.
  
- (c) Construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
  
- (d) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
  
- (e) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
  
- (f) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
  
- (g) All stockpiles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.

- (h) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (i) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (j) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (k) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and runoff of demolition or construction-related materials, and to contain sediment and contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- (l) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

The final Construction Best Management Practices plan shall be in conformance with the site and development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site and development plans shall be reported to the Executive Director. No changes to the Coastal Commission approved final site and development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT DESCRIPTION/SITE HISTORY**

#### Project Description.

The proposed development consists of construction of a 2,080 linear-foot trail system, a 780- linear-foot extension of the Coastal Rail Trail and restoration of 2.35-acres of native habitat. The trails will be constructed using a mixture of the existing sand stone soil on site and non-toxic stabilizer. Ancillary development includes a monument/art installation, viewing deck, signage, benches, post and cable fencing and temporary irrigation. The 3.44-acre site is located immediately south of San Elijo Lagoon and inland of Pacific Coast Highway 101 in the City of Solana Beach ([ref. Exhibit No. 1](#)). Use of the site has historically been commercial; however, the site has been vacant for at least 35 years, and the San Elijo Lagoon Conservancy purchased the property in 2011 to preserve it as open space. Habitat types on the site consist mostly of disturbed non-native

vegetation or bare ground, however, the site also contains 1.19-acres of native habitat including 1.14-acres of mixed Diegan coastal sage scrub (DCSS) and 0.05-acres of Orcutt's pincushion.

Proposed grading on the property includes approximately 3,400 cubic yards of cut and 1,400 cubic yards of fill and is necessary to remove an old asphalt pad and to construct the trails system. Grading activities and trail construction will result in the removal of 1.14-acres of DCSS. The applicant is proposing to mitigate these impacts at just over a 3:1 ratio through the creation of 2.35-acres of several native habitat communities onsite and the substantial restoration of 1.25-acres of DCSS offsite on a parcel owned by County of San Diego and managed by the San Elijo Lagoon Conservancy.

The trail system has been designed to connect to the City of Solana Beach's Coastal Rail Trail and existing trails within the San Elijo Lagoon Ecological Reserve. Additionally, the trail has been designed to connect to a future project that will connect the western portion of the trail to a future crossing of Highway 101 and Cardiff State Beach.

#### Site History.

The project site has a long history of disturbances and human use. Aerial photography indicates that the site was cleared and paved sometime in the 1940s – 1950s. Between 1954-1969 the site was used as a gas station. Since that time, a number of temporary uses, including a produce stand and a soil stockpile, occurred onsite. In 1999/2000 approximately 80% of the site was re-graded in association with a railway improvement project. In the late 2000's, the site was earmarked for construction of a 30-unit "condotel" project. That development never occurred, and in 2011, the San Elijo Lagoon Conservancy (SELCO) purchased the property, with the goal of preserving the site as open space. In 2017, the City of Solana Beach approved modification of the zoning on the site from commercial to open space. At this time, conceptual trails and landscaping plans were approved by the City and a conservation easement was placed on the property to protect the site as open space in perpetuity.

## **B. BIOLOGICAL RESOURCES**

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 longterm commercial, recreational, scientific, and educational purposes.*

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 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 of Solana Beach's LUP has several policies that address impacts to sensitive habitat, including:

***Policy 3.6:*** *Any area mapped as ESHA shall not be deprived of protection as ESHA, as required by the policies and provisions of the LCP, on the basis that the habitat has been illegally removed, degraded, or species that are rare or especially valuable because of their nature or role in an ecosystem have been eliminated.*

***Policy 3.8:*** *ESHA shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

***Policy 3.9:*** *Public access-ways and trails are considered resource dependent uses...*

***Policy 3.11:*** *New development shall be sited and designed to avoid impacts to ESHA... if there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. Impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives shall be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site or where off-site mitigation is more protective. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA. Mitigation for impacts to ESHA shall be provided at a 3:1 ratio.*

***Policy 3.12:*** *Mitigation measures for impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives, including habitat restoration and/or enhancement shall be monitored for a period of no less than five, and no more than ten years following completion.*

***Policy 3.13:*** *ESHA shall be protected and, where feasible, enhanced.*

***Policy 3.20:*** *Limit redevelopment and development in environmentally sensitive areas, such as upland slopes and watershed areas in and adjacent to, and draining directly to Holmwood Canyon and San Elijo Lagoon Ecological Reserve to activities supporting its preservation.*

The site is vegetated with a variety of non-native, ornamental, invasive and native habitat types. As proposed, the some of the existing vegetation will be removed to construct the public trail system. Additional grading is necessary to remove remnants of a large asphalt

pad originally constructed when the site contained active commercial uses. Since that time, and due to lack of use on the site, the asphalt area has become covered by a small layer of soil and some vegetation (including native) is growing on top. As proposed, the asphalt will be graded and removed, including the vegetation growing on top. The applicant has indicated that removal of the below grade remnant asphalt pad is necessary to ensure long-term success of the proposed habitat restoration.

### 1. Vegetation Communities

The parcel primarily consists of bare ground, non-native ornamental plant species, invasive species, volunteer trails, and a road used when the site was used for construction staging. However, approximately 20% of the site is vegetated by native plants including 0.05 acres of Diegan coastal sage scrub (DCSS), 1.09 acres of disturbed Diegan coastal sage scrub, and 0.05 acres of Orcutt's pincushion.

The 0.05-acre, Diegan coastal sage scrub area is composed of California sagebrush (*Artemisia californica*) California brittlebrush (*Encelia californica*), lemonadeberry (*Rhus integrifolia*), elderberry (*Sambus nigra*) and bladderpod (*Peritoma arborea*).

The 1.09-acre disturbed Diegan coastal sage scrub is comprised mostly of Menzie's goldenbush, deerweed (*Acmispon glaber*), Santa Barbara milkvetch (*Astragalus trichpodus*), bladder pod, California buckwheat (*Erigonum fasciculatum*) and coyotebush (*Baccharis pilularis*). A number of non-native vegetation types including daisy, thistle, sea lavender and ripgut brome are also found within the disturbed DCSS area.

The remaining 0.05-acre portion is vegetated with Orcutt's pincushion, an annual herb that blooms from approximately January through August. The species inhabits sandy coastal bluff scrub and coastal dunes from Ventura to San Diego. The species has a California Native Plant Society (CMPS) California Rare Plant Rank 1B.1. The CNPS 1B.1 status indicates that the plant is rare or endangered in California or elsewhere, and seriously endangered in California. The 0.05-acre population is located on the western portion of the site and adjacent to Highway 101 ([ref. Exhibit No. 3](#))

The biological report submitted for the proposed development determined the areas of disturbed and higher quality DCSS as well as the Orcutt's pincushion population habitat to be ESHA as defined by the City of Solana Beach's certified LUP. In addition, the LUP ESHA maps show all of these habitat types as ESHA ([ref. Exhibit No. 5](#)). As cited above, the LUP requires mitigation for impacts to ESHA be provided at a 3:1 ratio.

The applicant notes that the Diegan coastal sage scrub at the site is heavily disturbed and has very low biological values or functions. The Commission's ecologist reviewed the biological report for the project and conducted a site visit and agrees that the DCSS is poor quality, fragmented, and does not include habitat occupied by California gnatcatchers, and therefore is not considered an Environmentally Sensitive Habitat Area (ESHA), as defined and protected by the Coastal Act. Nevertheless, the DCSS is native vegetation that is a valuable part of the natural ecosystem. Because of the CNPS status



and rarity of Orcutt's pincushion, this vegetation type does meet the definition of ESHA and is protected by Section 30240 the Coastal Act.

A wetland delineation was also conducted for the property and the delineation concluded that the site contains three potential wetland features and six potential "other waters," such as erosional drainage features. However, none of these features were determined as jurisdictional wetlands. The Commission's ecologist reviewed the delineation and visited the site and confirmed that no wetlands, as defined by the Coastal Act, are present on the site.

## 2. Impacts.

The subject site contains historic and abandoned asphalt, the majority of which is covered by soil. In certain areas the asphalt is covered by both soil and vegetation. In order for the site to be restored and optimal conditions for restoration created, this asphalt must be removed. In addition, previous uses on the site (including soil stockpiling) have created uneven sections and artificial ridges. To remedy this, the proposed development includes removal of the abandoned asphalt and grading (3,400 cubic yards of cut and 1,400 cubic yards of fill) for a public trail system, a viewing deck and signage.

To implement the removal of asphalt and establish grading, all of the existing Diegan coastal sage scrub will be removed (1.14-acres). In addition, as originally proposed the Orcutt's pincushion would have been removed to accommodate a portion of the trail system and then replanted at a different location within the San Elijo Lagoon Ecological Reserve. However, there is a possibility that some of the Orcutt's pincushion would not survive relocation, and because the Orcutt's pincushion has been determined to be ESHA, removal and relocation would be inconsistent with the City's LUP and the Coastal Act. The applicant has therefore submitted draft revised plans that realign the trail away from the Orcutt's pincushion population and protect the vegetation in place. To ensure this revision is implemented and the sensitive habitat protected, **Special Condition No. 1** requires the applicant to submit final plans that include relocation of the trail and preservation of the Orcutt's pincushion in place.

Additionally, while the biological report indicates that there were no sensitive bird species surveyed onsite, the project is located in close proximity to San Elijo Lagoon Ecological Reserve. San Elijo Lagoon includes nearly 1,000-acres of wetland is home to more than 1,000 species of plants and animals. More than 319 bird species have been recorded at San Elijo Lagoon and Cardiff State Beach and more than 106 of these species are rare to uncommon migrants, and 74 are considered sensitive, threatened, or endangered species, including 16 of the 65 nesting species protected by the Migratory Bird Act (ref. <https://www.sanelijo.org/birds>). To ensure the proposed development does not negatively impact sensitive bird species, **Special Condition No. 4** has been included that prohibits work during the nesting season, unless approved in advance by the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service.

## 3. Mitigation

As previously discussed, the project includes the removal of 1.14-acres of unoccupied Diegan coastal sage scrub. While this vegetation is not considered ESHA under the Coastal Act, it is a valuable coastal resource, and the removal of the native vegetation must be mitigated. The Commission historically has required a 3:1 ratio for coastal sage scrub mitigation, and at least 1:1 habitat creation (i.e., no net loss). Additionally, the City of Solana Beach's Land Use Plan (LUP) identifies the habitat as ESHA, and requires impacts to ESHA be mitigated at a 3:1 mitigation ratio. Thus, in this case, a total of 3.42-acres of creation/restoration is required.

The applicant is proposing to mitigate for the impacts both through on- and offsite creation/restoration. Onsite, proposed restoration will include the creation of a total of 2.35-acres of native vegetation. The creation will consist of 0.06-acres of DCSS within a portion of the existing construction access road, as well as a mix of Maritime scrub, Maritime chaparral, Maritime succulent and coastal dune habitat. The applicant has indicated that the site is being revegetated with this mix of native habitat types to illustrate the various habitat types native to coastal San Diego as part of the educational component of the trail construction. Offsite mitigation includes the creation of 1.17-acres of DCSS on a highly-degraded, County-owned parcel managed by the San Elijo Lagoon Conservancy. This site is protected from future development as the site is zoned open space and is located within the State-controlled San Elijo Lagoon Ecological Reserve. Therefore, the mitigation proposed by the Conservancy includes 3.52-acres total, or 0.10-acres above the required 3:1 mitigation ratio.

As previously stated, both the Commission and the City of Solana Beach's LUP would require impacts to the site be mitigated for at a 3:1 mitigation ratio, which the applicant is proposing. In addition, the Commission typically requires at least a 1:1 creation component to replace the habitat type impacted and ensure that no net loss of habitat occurs in the Coastal Zone. In this case, the proposed development will impact Diegan coastal sage scrub (DCSS). The applicant is mitigating onsite with a variety of habitat types including 0.06-acres of DCSS. However, in order to ensure the no net loss requirement, mitigation must include a total of 1.14-acres of creation or substantial restoration of DCSS. The project description includes offsite mitigation in the form of substantial restoration of 1.17-acres of DCSS on a site located within the San Elijo Lagoon Ecological Reserve and within the Coastal Zone. While onsite mitigation is preferable, in this case, offsite mitigation can be accepted because the offsite location is in close proximity to the project site, is within the same watershed, and is located within the Coastal Zone. The Commission's staff ecologist has reviewed the overall mitigation plan and supports the proposal including both the onsite and offsite mitigation.

To ensure the mitigation is carried out, and long term success of the mitigation is ensured, **Special Condition No. 2** requires the applicant to submit a final Mitigation and Monitoring Plan. This condition requires the applicant to submit a detailed long-term monitoring program, including specific performance criteria developed by the Commission's ecologist, to ensure the restoration of both the on- and offsite mitigation areas are maintained over time.

In addition, **Special Condition No. 3** requires the entire trail site be placed under an open space restriction to ensure no development occurs, with the exception of trail construction and restoration activities, and requires the permit to be recorded as a deed restriction against the property to ensure that the open space is preserved in perpetuity.

In summary, the proposed trail construction will have some impacts on native habitat, but these impacts will be mitigated through the creation of new habitat onsite and the substantial restoration of habitat offsite. No impacts to ESHA will occur. As conditioned, the proposed development will protect and enhance biological resources consistent with the applicable sections of Coastal Act and the City of Solana Beach's LUP.

### **C. PUBLIC ACCESS**

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 30212 of the Coastal Act states:

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

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

Section 30213 of the Coastal Act states:

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

Relevant LUP policies include the following:

**Policy 2.3:** *The shoreline, parklands, beaches and trails located within the City provide coastal access and a wide range of recreational opportunities in natural settings which include hiking, bird watching, walking, bicycling, educational study and picnicking. These recreational opportunities should be protected, and where feasible, expanded or enhanced as resources of regional, state and national importance.*

**Policy 2.6:** *Public access-ways and trails are considered resource dependent uses, and may be located within or adjacent to in ESHA where sited to minimize*

*impacts to ESHA. Where determined to be desirable (by consideration of supporting evidence), limited or controlled methods of access and/or mitigation including but not limited to, signage, placement of boardwalks, and limited fencing designed to eliminate or minimize impacts to ESHA shall be utilized. Access-ways to, and along the shoreline shall be sited, designed, and managed to avoid and/or protect marine mammal hauling grounds, seabird nesting and roosting sites, sensitive rocky points and intertidal areas, and coastal dunes.*

***Policy 2.7:*** *New development shall be sited and designed to avoid impacts to public access and recreation along the shoreline and trails. If there is no feasible alternative that can eliminate or avoid all access impacts, then the feasible alternative that would result in the least significant adverse impact shall be required. Some impacts may be mitigated through the dedication of an access or trail easement where the project site encompasses an LCP mapped access or trail alignment, where the City, County, State, or other public agency has identified a trail used by the public, or where prescriptive rights exist. Mitigation measures required for impacts to public access and recreational opportunities shall be implemented prior to, or concurrent with construction of the approved development.*

The proposed development will redevelop a formerly commercial site with a public trail system including signage, benches and native habitat. The development will include 2,080 linear feet of new trail system and 780 linear feet Coastal Rail Trail extension providing connectivity to the Solana Beach Coastal Rail Trail. The proposed trail system will also connect with existing San Elijo Lagoon Ecological Trail Reserve trails and future highway 101 crossing to Cardiff State Beach and the ocean ([ref. Exhibit No. 5](#)). The site does not propose any parking, but public parking is currently available at the adjacent Rail Station and surrounding residential development. The use of the trails will be open and free to the public year round. Therefore, the proposed development would result in improved public access amenities, as identified in the City's certified LUP, and is consistent with the public access and recreation policies of the Coastal Act.

#### **D. 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.*

Relevant LUP policies include the following:

***Policy 3.42:*** *Earthmoving during the rainy season (extending from November 1 to March 1) should be restricted for development that is (1) located within or adjacent to ESHA, or (2) that includes grading on slopes greater than 4:1 except for grading on coastal bluffs that is required for bluff retention devices. In such cases, approved grading shall not be undertaken unless there is sufficient time to complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 1, unless the City determines that completion of grading would be more protective of resources.*

***Policy 3.43:*** *Where grading is permitted during the rainy season (extending from November 1 to March 1), erosion control measures such as sediment basins, silt fencing, sandbagging, installation of geofabrics, shall be implemented prior to and concurrent with grading operations. Such measures shall be maintained through final grading and until landscaping and permanent drainage is installed.*

***Policy 3.69:*** *The biological productivity and the quality of wetlands shall be protected and, where feasible, restored.*

Construction of the trail system and related amenities will require vegetation clearing, grading and debris removal activities that could result in a temporary increase in erosion affecting the quality of storm water runoff. Specifically, the project includes 3,400 cubic yards of cut and 1,400 cubic yards of fill. To ensure no impacts to water quality occur, **Special Condition No. 5** has been included and requires the applicant to submit a final construction phase BMP plan, to be reviewed and approved by the Executive Director. To ensure that any excess grading material is appropriately disposed of, **Special Condition No. 5 further** requires that any project-driven spoil export be deposited in a legal site outside of the coastal zone or a permitted site within the coastal zone.

The Commission finds that only as conditioned as described above, can the proposed development be found consistent with relevant sections of the City's LUP and the Coastal Act, and that as conditioned; the proposed development will provide adequate protection to marine resources and water quality.

## **F. LOCAL COASTAL PLANNING**

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The subject site is located in the City of Solana Beach, which has a certified LUP, but no certified LCP. Thus, Chapter 3 of the Coastal Act remains the legal standard of review and Solana Beach's LUP policies are used as guidance. The site is zoned and designated for open space uses, and the proposed trail system is consistent with this designation. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the Solana Beach LUP. Approval of the project, as conditioned, will not prejudice the ability of the City of Solana Beach to continue to implement its certified LUP, nor to implement an LCP in the future.

## **G. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. In this case, the City of Solana Beach determined the project is exempt from CEQA.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing biological resources and water quality/runoff will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of Solana Beach LUP;
- Jurisdictional Delineation Report for the Harbaugh Trails Restoration Project prepared by the San Elijo Lagoon Conservancy and dated March, 2018;
- Limited Geotechnical Investigation prepared by Geotechnical Exploration, Inc. dated March 27, 2017;
- Biological Resources Technical Report for the Harbaugh Seaside Trails Restoration Project prepared by the San Elijo Lagoon Conservancy and dated December, 2017
- Memorandum of Agreement between the County of San Diego and the San Elijo Lagoon Conservancy dated September 12, 2012