

**CALIFORNIA COASTAL COMMISSION**

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# W24a

**DATE:** November 29, 2018

**TO:** Coastal Commission and Interested Parties

**FROM:** Karl Schwing, District Director  
Charles Posner, Supervisor of Planning  
Meg Vaughn, Staff Analyst

**SUBJECT:** City of Huntington Beach Local Coastal Program Amendment No. 1-18 (LCP-5-HNB-18-0046-1 Windward Specific Plan) for the Commission meeting of December 12, 2018 in Newport Beach.

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## SUMMARY OF AMENDMENT REQUEST

The City of Huntington Beach is requesting an amendment to the Land Use Plan (LUP) and Implementation Plan (IP) portions of its certified Local Coastal Program (LCP). The focal point of the proposed LCP amendment is the addition of a new specific plan to the IP (*Windward Specific Plan SP-16*). The proposed amendment would affect the 5-acre site, located southeast of the intersection of Bolsa Chica Street and Los Patos Avenue, known now as the Windward site (formerly known as ‘The Ridge’).

The proposed Specific Plan includes a two alternatives approach to address the subject site: the Acquisition Alternative and the Development Alternative. If the Acquisition Alternative is implemented, the subject site and neighboring Goodell property will be purchased by the Trust for Public Land (TPL), and both properties will be preserved in Open Space in perpetuity. If the Acquisition Alternative is implemented, the Specific Plan’s second alternative, the Development Alternative, becomes moot and the allowable land uses at the site will be open space parks and/or conservation. The current deadline for the Acquisition Alternative is December 31, 2018. However, the deadline may be extended if both the TPL and the property owner agree. The property owner, Signal Landmark Company, has indicated that an extension to April 30<sup>th</sup> 2019 will be executed prior to the Coastal Commission’s December 12, 2018 hearing. To date the acquisition deadline has been extended five times. The Acquisition Alternative has been in effect since April 2016 while the landowner and City have been refining the details of the Development Alternative in preparation for the Commission’s action on the proposed LCP amendment.

If the Development Alternative is pursued, the LCP amendment would change the land use designation on the western approximately 2.5 acres from Open Space-Parks OS-P to Residential Medium Density RM-15, while retaining the Open Space Parks designation on the eastern 2.5 acres

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of the 5-acre site. The zoning on the entire Windward site would change from Residential Agriculture-Coastal Zone Overlay (RA-CZ) to Specific Plan-Coastal Zone Overlay (SP 16-CZ). The Land Use Plan amendment also proposes to add new figure *Extract of Figure C-6*, add new *Figure C-6b*, and to modify Table C-2 (*Community District and Subarea Schedule*) by adding two new Subareas: 4L Sunset Beach (as a placeholder only) and 4M Windward; and modify existing *Figure C-10* by adding new Subarea 4M to that subarea map to the LUP. The proposed changes are reflected in Exhibits to Resolution No. 2017-18: *Exhibit B Amendment Land Use Plan (Extract of Figure C-6 of the Coastal Element)*; *Exhibit C Amended Local Coastal Program Text and Figures (in addition to Exhibit B)*, *Exhibit D Zoning Text Amendment No. 16-004* [the Windward Specific Plan, No. 16]; and *Exhibit E Zoning Map Amendment No. 16-003*. For the site location, please see Exhibit 3. Text proposed to be added to LUP Table C-2 states: “*In the event the Windward Specific Plan does not become operative as described in that document, the uses permitted in Subsection 4M [the subject Windward site] shall be limited to Open Space-Parks and/or Open Space-Conservation.*”

The LCP amendment was submitted to the Commission on June 8, 2018. On August 31, 2018, the Executive Director determined that the City’s amendment submittal was in proper order and legally adequate to comply with the submittal requirements of Coastal Act Sections 30512 to 30514. Pursuant to Section 30511(a) of the Coastal Act, an amendment to the certified LCP that modifies both the LUP and IP portions must be scheduled for a public hearing and the Commission must take action within 90 days of a complete submittal. The 90th day after filing the complete submittal was November 29, 2018. Pursuant to Coastal Act Section 30517 and Section 13535(c) of the Commission’s regulations, the Commission on November 8, 2018 extended the statutory 90-day time limit for Commission action on the proposed LCP amendment for one year. The Commission must act upon this LCP amendment request before November 29, 2019.

## **SUMMARY OF STAFF RECOMMENDATION**

The subject Windward site is located on the Bolsa Chica mesa, which rises above and to the north of the Bolsa Chica Ecological Reserve and wetlands complex. In addition to the habitat of the Bolsa Chica Ecological Reserve itself, abundant habitat is present in the vicinity including wetlands and important groves of eucalyptus trees used by raptors for nesting and roosting which have been identified as environmentally sensitive habitat areas (ESHAs). The Bolsa Chica area in general is also significant due to the extent of Native American cultural resources that have been discovered there. The Bolsa Chica Mesa particularly, is an area known for its significant cultural value dating back as far as 9,000 years before present time. Evidence has been found of prehistoric human use of the area as a cemetery and for manufacturing and ceremonial use of unique cogged stone artifacts. Numerous other archaeological features and artifacts have also been found. The subject site also abuts the Goodell Property, which is located to the south of the subject site and is also known to contain sensitive habitat and sensitive cultural resources. The subject site and the Goodell Property are the last two remaining properties in the northern Bolsa Chica area, whose land use designation and zoning remain in question. Both the Windward and Goodell Properties are currently vacant.

There is a history of LCP amendment requests at the subject site, HNB LCPA Nos. 1-12 and 3-10<sup>1</sup>. In each case the amendment requests were withdrawn prior to Commission action. But the earlier submittals allowed the issues related to the site to be identified. These issues include the loss of the Open Space Parks land use designation on the entire 5-acre site, the absence of necessary habitat buffer setbacks (from ESHA and wetlands) and setbacks from known sensitive cultural resources (including a prehistoric house pit and related shell deposits in the southeast corner of the site<sup>2</sup>). Earlier submittals also lacked measures to address on-site habitat or cultural resources that are or may be present on site, and the lack of passive use trail connections to surrounding trails. These major issues were subsequently addressed during collaborative meetings between the City, various stakeholders including the Bolsa Chica Land Trust, and Coastal Commission staff prior to submittal of the LCPA.

With the currently proposed LCPA, these issues are addressed with the two alternative approach for the future of the Windward site: the Acquisition Alternative and the Development Alternative, as outlined in the proposed Windward Specific Plan. Under the Acquisition Alternative, the site would be purchased by the Trust for Public Land and retained in open space with no development in perpetuity. If the Acquisition Alternative is successful and becomes effective, the Windward Specific Plan Development Alternative will not be effective and will be moot. This is acknowledged in the Specific Plan. The Development Alternative would allow - **ONLY** when the eastern 2.5 acres **AND** the entire 6.2 acre neighboring Goodell property are conveyed or irrevocably offered for conveyance to a public or non-profit entity for open space and resource conservation purposes - medium density residential development on the westerly 2.5 acres of the Windward site (called the Windward Residential Parcel in the Specific Plan). Thus, the 2.5 acres of residential development that would be allowed under the Specific Plan's Development Alternative could be implemented only after preservation of 8.7 acres of land for open space conservation uses is assured. It should also be noted that the western part of the Windward site is adjacent to Bolsa Chica Street and existing residential development. The eastern part of the site is adjacent to open space including habitat areas of the Parkside and Goodell properties. The Parkside property was approved with a plan for conservation and development under CDP 5-11-068 (October 2012) which is currently underway; the Goodell property is currently undeveloped.

Under the Development Alternative, the loss of the Open Space Parks land use designation on the western half of the existing parcel is addressed in the proposed Specific Plan through the preservation of the eastern half of the subject site and the entirety of the neighboring 6.2-acre Goodell site, totaling a residential footprint of 2.5 acres and open space preservation of 8.7 acres. Moreover, the issue of protection of cultural resources is addressed by requiring any future coastal development permit (CDP) at the site to include preparation of an Archaeological Mitigation and Monitoring Plan, requiring controlled archaeological grading during all earth moving activities at the site, which will be monitored by both Native American and archaeological monitors, preference for preservation of resources in place, and recognition that

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<sup>1</sup> Both LCPA 1-12 and 3-10 proposed changing the land use designation at the entire 5-acre site from Open Space Parks to Low Density Residential and the zoning from Residential Agriculture to Low Density Residential, with no protections for cultural resources or habitat and no measures to offset the loss of the Open Space Parks designation proposed. LCPA 3-10 was withdrawn to allow more time to try to resolve issues and was re-submitted with no changes as LCPA 1-12.

<sup>2</sup> The prehistoric house pit and related shell deposits were removed without benefit of a coastal development permit. This was addressed in CCC-13-CD-08, Signal Landmark, and is discussed later in this report.

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the approved development footprint does not constrain on-site preservation options (among other things). The proposed preservation in open space of the eastern 2.5 acres of the Windward site and the neighboring Goodell property also preserves cultural resources known or unknown. The presence of significant cultural resources has been documented throughout the Bolsa Chica Mesa, including on the subject site and adjacent Goodell Property.<sup>3</sup>

The protection of sensitive habitat in the surrounding area as well as any that may exist at the Windward site at the time a CDP is processed (none is currently identified on the Windward site, but could develop prior to a CDP application), is addressed with the preservation in open space of the eastern 2.5 acres of the subject site and the 6.2-acre Goodell property (located immediately south of the site), which preserves habitat and provides necessary buffers from existing habitat adjacent to the subject site and the Eucalyptus ESHA on the Parkside site to the east, and requires that measures to protect Southern tarplant and/or burrowing owl to be included with the CDP application, and implementation of a Habitat Management Plan for the eastern 2.5 acres of the Windward site (among other things).

In addition, the proposed Specific Plan addresses the issue of public access and recreation by requiring public access trail improvements with linkages to public trails and recreational opportunities in the surrounding area.

Staff is recommending that the Commission, after public hearing, certify the proposed amendment as submitted. As submitted the LUP amendment is adequate to ensure consistency with the applicable Chapter Three policies of the Coastal Act and the IP amendment does conform to and is adequate to carry out the policies of the certified LUP (as proposed to be amended).

The motions to accomplish the staff recommendation begin on Page 8.

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<sup>3</sup> Commission staff's consultation with the Native American community with regard to development at this site and in the vicinity has been ongoing for more than a decade as various proposals have come before the Commission. Most recently, with regard to this specific proposal, staff contacted six local Native Americans, speaking with two and leaving messages for four. Commission staff spoke with Anthony Morales of the Gabrielenos, and Joyce Perry of the Juanenos. Neither expressed objections to the proposed LCP amendment. As of the date of finalization of this staff report, the other Native Americans have not responded to Commission staff messages.

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### EXHIBITS

- Exhibit 1 – Regional Vicinity Map
- Exhibit 2 – Relative Locations of the Windward, Goodell, Parkside, & Brightwater Sites
- Exhibit 3 – Huntington Beach City Council Resolution No. 2017-18  
Resolution
  - A. Location Map
  - B. Amended Land Use Plan (Extract of Figure C-6 of Coastal Element)
  - C. Amended Local Coastal Program Text and Figures (in addition to Ex. B)
  - D. Zoning Text Amendment No. 16-004  
Windward Specific Plan SP-16 (Online only)
  - E. Amended Zoning Map
- Exhibit 4 – Development Agreement
- Exhibit 5 - Plant Communities Survey Map (LSA, 2016)
- Exhibit 6 - Southern Tarplant Survey (LSA, 2016)

## **I. OVERVIEW**

### **A. STANDARD OF REVIEW**

The Coastal Act provides:

*The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200)... (Section 30512(c))*

The Coastal Act further provides:

*The local government shall submit to the Commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter.*

*...The Commission may only reject ordinances, zoning district maps, or other implementing action on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out, together with its reasons for the action taken. (Section 30513)*

Section 13532, Title 14, California Code of Regulations, provides, in relevant part:

*The executive director shall prepare a staff recommendation which shall set forth specific findings, including a statement of facts and legal conclusions as to whether or not the proposed land use plan or LRDP conforms to the requirements of the California Coastal Act of 1976 and of these regulations. The proposed findings shall include any suggested modifications necessary to bring the land use plan or LRDP into compliance with the California Coastal Act of 1976, unless the local government has requested that such modifications not be part of the Commission's action . . .*

Section 13542(c) provides, in relevant part:

*The standard of review of the implementing actions shall be the land use plan as certified by the Commission. If the land use plan is conditionally certified subject to local government acceptance of the suggested modifications, the standard of review shall be the conditionally certified land use plan. However, if the local government elects to revise and resubmit the land use plan in a manner different from that set forth in the suggested modifications of the conditioned certification, the Commission's approval of the implementing action shall be void.*

The standard of review that the Commission uses in reviewing the Land Use Plan text and/or map changes, as proposed by the City, is whether the changes are in conformity with, and meet the requirements of, the policies of Chapter 3 of the Coastal Act. (Pub. Res. Code §§ 30512(c),

30514(b); 14 CCR § 13532.) The standard of review for the proposed amendment to the Implementation Plan/Zoning Ordinance is that the proposed amendment is in conformance with, and adequate to carry out, the provisions of the certified Coastal Element/Land Use Plan (LUP) portion of the City of Huntington Beach certified Local Coastal Program, as proposed to be amended herein. (Pub. Res. Code §§ 30513, 30514(b); 14 CCR § 13542(c).)

**B. PUBLIC PARTICIPATON**

Section 30503 of the Coastal Act requires local governments to provide the public with maximum opportunities to participate in the development of the LCP amendment prior to its submittal to the Commission for review. The City held three public hearings on the Windward Specific Plan LCPA and related local actions: a Planning Commission meeting on June 27, 2017 and a City Council hearing on May 21, 2018 and June 4, 2018. All of the local hearings were duly noticed to the public. The City made all staff reports and agendas for the public hearings available for public review in the Community Development Department and on the City's website. Notice of the Commission's hearing on the subject LCP amendment has been distributed to all known interested parties.

## **II. MOTIONS & RESOLUTIONS**

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

### **A. APPROVAL OF LUP AMENDMENT NO. LCP-5-HNB-18-0046-1 AS SUBMITTED**

#### **Motion 1:**

*I move that the Commission certify Land Use Plan Amendment No. LCP-5-HNB-18-0046-1 as submitted by the City of Huntington Beach.*

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

#### **Resolution to certify the land use plan amendment as submitted:**

*The Commission hereby certifies the Land Use Plan Amendment No. LCP-5-HNB-18-0046-1 as submitted by the City of Huntington Beach and adopts the findings set forth below on grounds that the land use plan as amended meets the requirements of and is in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment will meet the requirements of 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 plan amendment 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.*

### **B. APPROVAL OF IP AMENDMENT NO. LCP-5-HNB-18-0046-1 AS SUBMITTED**

#### **Motion 2:**

*I move that the Commission reject Implementation Plan Amendment No. LCP-5-HNB-18-0046-1 as submitted by the City of Huntington Beach.*

Staff recommends a **NO** vote on the foregoing motion. Failure of this motion will result in certification of the Implementation Plan Amendment No. LCP -5-HNB-18-0046-01 as submitted 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 plan amendment as submitted:**

*The Commission hereby certifies the Implementation Plan Amendment No. LCP-5-HNB-18-0046-1 as submitted by the City of Huntington Beach and adopts the findings set forth below on grounds that the implementation plan amendment conforms with, and is adequate to carry out, the provisions of the certified land use plan. Certification of the implementation plan amendment will meet the requirements of 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 plan amendment 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.*

### **III. FINDINGS FOR APPROVAL OF THE LCP AMENDMENT (LUP/IP) AS SUBMITTED**

#### **A. DESCRIPTION OF THE LCP AMENDMENT**

The City is requesting an amendment to the City of Huntington Beach certified Local Coastal Program (LCP) effecting both Land Use Plan (LUP) and Implementation Plan (IP) portions of the LCP. The LCPA was submitted for Commission action pursuant to Huntington Beach City Council Resolution No. 2017-18. This amendment request makes changes to the 5-acre Windward site only.

Since the original certification of the City's Land Use Plan (1982) and Implementation Plan (1985), the land use designation at the subject site has been Open Space-Parks and the zoning at the subject site has been Residential Agriculture-Coastal Zone overlay (RA-CZ). As certified, the land use designation and zoning are not consistent with each other.

#### **Land Use Plan Amendment**

The purpose of the LCP amendment request is to certify the Windward Specific Plan which will establish land use designation and zoning at the site that is consistent with the Chapter 3 policies of the Coastal Act and with the certified LUP polices (as proposed to be amended as part of this LCP amendment), particularly those regarding protection of sensitive cultural resources, sensitive habitat, priority of use, and public access and recreation.

Changes proposed to the LUP include: changing the land use designation on the western half of the 5-acre subject site from Open Space Parks to Medium Density Residential while retaining the Open Space Parks land use designation on the eastern 2.5 acres of the subject site; making related changes in the LUP necessary to support the land use designation change including adding new figure *Extract of Figure C-6* to the Coastal Element, adding new *Figure C-6b*, and modifying existing Table C-2 *Community District and Subarea Schedule* by adding two new Subareas: 4L Sunset Beach<sup>4</sup> and 4M Windward; adding new language describing the permitted uses, density/intensity, and design and development standards for the new subarea 4M Windward, particularly that the subarea is subject to the Windward Specific Plan; and modifying the existing *Figure C-10* by adding new Subarea M to that map. The changes are proposed to the LUP as necessary to support the proposed Windward Specific Plan. However, per proposed text in LUP Table C-2, "*In the event the Windward Specific Plan does not become operative as described in that document, the uses permitted in Subsection 4M [the subject Windward site] shall be limited to Open Space-Parks and/or Open Space-Conservation.*"

#### **Implementation Plan Amendment**

Changes proposed to the IP include: changing the zoning at the entire 5-acre subject site from Residential Agriculture-Coastal Zone Overlay (RA-CZ) to Windward Specific Plan No. 16 - coastal

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<sup>4</sup> The addition of subarea 4L Sunset Beach is intended as a placeholder only. No action affecting the Sunset Beach area of the City is proposed by the City as part of this LCP amendment submittal. No change to the current, uncertified status of Sunset Beach is proposed or will occur as a result of this LCP amendment.

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zone overlay (SP-CZ); amending the zoning map accordingly; and adding the new Windward Specific Plan (Specific Plan 16) to the Implementation Plan.

The goals of the proposed LCPA are largely contained in the proposed Windward Specific Plan (SP-16), which will be added to the City's certified IP. The other changes proposed to the LCP are largely in support of this specific plan, including map changes and LUP text creating a subarea for the Windward site and referencing the Specific Plan as the guiding document for the site.

The Windward Specific Plan identifies two alternatives for the future of the Windward site: the Acquisition Alternative and the Development Alternative. Under the Acquisition Alternative, the entire 5-acre site would be purchased by the Trust for Public Land and retained in open space with no development in perpetuity. In addition, the Acquisition Alternative also includes purchase and preservation in open space of the adjacent 6.2-acre Goodell property with no development in perpetuity. The Windward property owner, Signal Landmark Company, holds an exclusive option to acquire the Goodell property. And Signal Landmark Company has entered into an option agreement with the Trust for Public Land (TPL) to allow the purchase by TPL of both the entire Windward and Goodell properties (the Acquisition Alternative). The purchase price has been determined by an independent third party appraisal. TPL is a nationwide non-profit organization that acquires land from private owners and conveys it into public or non-governmental organization ownership for conservation or public park purposes. TPL has been working with the local non-profit Bolsa Chica Land Trust to raise the necessary funds for purchase of the two sites since entering into the option agreement in April 2016. The current deadline for the option to purchase agreement between TPL and Signal Landmark Company is December 31, 2018. However, the deadline may be extended if both the TPL and the property owner agree. To date the deadline has been extended five times. The property owner, Signal Landmark Company, has indicated that TPL's current deadline to purchase will be extended a sixth time, to April 30<sup>th</sup> 2019. Extending the purchase deadline to April 30<sup>th</sup> 2019 would allow for a full three years on the option agreement. Signal Landmark has indicated that the extension will be executed prior to the Coastal Commission's December 12, 2018 hearing. TPL's option agreement has been in effect since April 2016. If the Acquisition Alternative is successful and becomes effective, the Windward Specific Plan Development Alternative will not be effective and will be moot. This is acknowledged in the Specific Plan.

If the funds are not raised by the option agreement deadline (as it may be extended) and the TPL's option to purchase expires, the second alternative, the Development Alternative, may proceed. The Development Alternative would allow - **ONLY** when the eastern 2.5 acres **AND** the entire 6.2-acre neighboring Goodell Property are conveyed or irrevocably offered for conveyance to a public or non-profit entity for open space and resource conservation purposes – medium density residential development on the western 2.5 acres of the subject site (called the Windward Residential Parcel in the Specific Plan). Thus, the 2.5 acres of residential development that would be allowed under the Specific Plan's second alternative could be implemented only after preservation of 8.7 acres of land for open space conservation uses is assured.

Methods imposed to implement the open space restrictions on the Windward Open Space Parcel and Goodell property are described in great detail in Chapter 5 of the Windward Specific Plan. Chapter 5 of the proposed specific plan provides the needed assurances by making the operative status of Required Approvals (specified in Section 5.3 of Chapter 5) and Implementation Documents

(specified in Section 5.4.1 of Chapter 5) mutually contingent upon approval and effectiveness of all the Required Approvals and Implementation Documents. The Implementation Measures of Chapter 5 will ensure that prior to issuance of a coastal development permit and any grading permit for the Windward Residential Parcel becoming “operative,” deed restrictions and irrevocable offers to dedicate the Windward Open Space Parcel and the Goodell Property are first executed and recorded.

The Goodell property is not located within the City’s boundary and thus is not part of its LCP jurisdiction. The proposed specific plan and related Development Agreement (discussed below), grew out of a desire by the property owner to resolve pending CEQA litigation which resulted in a three party negotiated settlement. The three parties involved in the settlement are: the property owner (Signal Landmark Company), the City, and the Bolsa Chica Land Trust (BCLT). The BCLT is the entity that filed the litigation challenging the City’s approval of a Mitigated Negative Declaration related to the City’s previous actions on the former Ridge project at the subject site. In an effort to resolve the CEQA litigation, the property owner (Signal Landmark Company), the City, and the BCLT agreed to enter into facilitated settlement discussions, ultimately reaching a negotiated settlement. The proposed Windward Specific Plan is a result of that settlement. Subsequent to the Settlement Agreement, the property owner, City staff, and Commission staff worked together to develop the current version of the Windward Specific Plan, which is intended to address the various issues at the site as necessary to assure conformance with the Chapter 3 policies of the Coastal Act and policies of the City’s certified LUP (as proposed to be amended herein). The primary issues addressed in the Specific Plan are priority of use (open space versus residential), protection of sensitive cultural resources, protection of environmentally sensitive habitat areas (ESHAs), and promotion of public access and recreation.

It is important to note that any conveyance of and use restriction imposed on the Goodell Property as described in the Windward Specific Plan are voluntary on the part of the owner of the Windward Property for the purpose of effectuating the Settlement Agreement and not the result of regulations imposed on the Goodell Property by either the City or, if the Windward Specific Plan is incorporated into the City’s certified LCP, the Coastal Commission. However, without implementation of one of the two alternatives for the Goodell Property described in the proposed Specific Plan (Section 1.2.3 of the Specific Plan), the proposed Windward Specific Plan becomes moot and the land uses allowed at the site will be limited to open space parks and conservation uses. The proposed LUP language for subarea 4M also states that if the Windward Specific Plan does not become operative (that is the required deed restrictions and conveyances are not implemented), the uses permitted in subarea 4M shall be limited to Open Space Parks and/or Open Space Conservation.

### **Previous LCPA Requests for the Subject Site**

In the past, the property owner had indicated a willingness to preserve the Goodell Property for open space conservation uses in exchange for a change in land use designation at the Windward site to allow residential use on the entire 5-acre site. This scenario was proposed by the City via the two earlier LCPAs for the subject site, then known as the Ridge project. However, the Goodell site is not located within the jurisdiction of the City of Huntington Beach. Rather, it is an “island” of unincorporated County area surrounded by the City. Moreover, the two previous LCPAs included only the proposal to change the land use designation and zoning at the site to allow residential development of the *entire* site, with the request that the Coastal Commission impose suggested modifications requiring the open space restrictions on the Goodell site. Imposing suggested

modifications via LCP amendment on a property not located within the LCP jurisdiction was problematic. For many practical, legal, and planning reasons this was not a feasible or acceptable course of action for Commission staff to recommend as suggested modifications to the LCP amendment at that time. Moreover, the earlier amendment requests did not incorporate any habitat setbacks, or setbacks from known sensitive cultural resources, and provided no measures to address any on-site resources, leaving the Commission in a position to recommend suggested modifications to the LCP amendment to address all of these unresolved issues. Ultimately, the City withdrew both earlier amendment requests prior to Commission action.

### **Subject Site**

The subject site is an approximately five acre property currently referred to as the Windward site (and formerly known as the Ridge Property), located southeast of the intersection of Los Patos Avenue and Bolsa Chica Road, APN 110-016-35 (See Exhibit 1). The Windward site has historically been farmed, and more recently served as the construction staging area for the adjacent Brightwater development. The site is east of (across Bolsa Chica Street) the 16 single family homes that comprise the Sandover development and the 349 single family homes that make up the Brightwater development. The Windward site is owned by Signal Landmark Company, the former owners and developers of the Sandover (City of Huntington Beach CDP 98-17, Signal Landmark Company Landmark) and Brightwater (CDP 5-05-020, Signal Landmark Company Landmark) developments. The Windward site is south of existing multi-family residential development. It is west of the Parkside residential development and immediately adjacent to/west of the Parkside wetlands, ESHA and restored habitat that are designated Open Space Conservation and zoned Coastal Conservation. Immediately south of the subject site is a 6.2 acre parcel, located in unincorporated Orange County, known as the Goodell Property. The Goodell Property is an unincorporated County “island” surrounded by the City of Huntington Beach. The City began incorporating the Goodell site into the City’s corporate boundary in approximately 2010, but that process was suspended at the request of the Goodell property owner.

The subject Windward site is located on the Bolsa Chica mesa, which rises above and to the north of the Bolsa Chica Ecological Reserve and wetlands complex. In addition to the habitat of the Bolsa Chica Ecological Reserve itself, abundant habitat is present in the vicinity. The wetlands, Eucalyptus environmentally sensitive habitat areas (ESHAs), and Open Space-Conservation area of the adjacent Parkside Property are immediately east of the subject site. Parkside’s northern eucalyptus grove ESHA is located approximately 135 feet from the eastern edge of the Windward site’s property line. The wetland complex on the Parkside Property is located approximately 195 feet from the Windward site’s eastern property line at its nearest point. In addition, the significant habitat and public trails of the Brightwater development are located west and south of the subject site, across Bolsa Chica Street. In addition, the subject site also abuts the Goodell Property, which is located to the south of the subject site and is known to contain sensitive habitat and sensitive cultural resources. The subject site and the Goodell Property are the last two remaining properties in the northern Bolsa Chica area, whose land use designation and zoning remain in question. Both the Windward and Goodell Properties are currently vacant.

The Bolsa Chica area in general is significant due to the extensive presence of environmentally sensitive habitats and wetlands and due to the significance and extent of Native American

cultural resources that have been discovered there. The Bolsa Chica Mesa particularly, is an area known for its significant cultural value dating back as far as 9,000 years before present time, based upon pre-historic human use, including manufacturing and ceremonial use of unique coggled stone artifacts, numerous archaeological features and artifacts, and as a Native American cemetery. The Mesa is also known for its significant habitat values. Although the Bolsa Chica lowlands and lower bench of the mesa have been preserved at great cost though public expenditure, much of the upland value of the mesa and nearby area have been lost to residential development.

### **Development Agreement**

In addition to the LCPA request, the submittal also includes a Development Agreement between the City of Huntington Beach and the property owner Signal Landmark Company, reinforcing the requirements of the Windward Specific Plan.

Government Code Section 65869 provides, in pertinent part, as follows:

*"A development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified . . . unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action."*

This language is included in the Development Agreement (under Recitals M.). In addition, that section of the Development agreement continues:

*"Because this Agreement is premised upon the certification of the LCPA by the Commission, the Parties recognize that it may not be "applicable" to the Development until the date that the certification of the LCPA by the Coastal Commission is final (the "Certification Date")."*

The Development Agreement also, under Recital K.2.a, includes "Required Approvals" and lists required City and Coastal Commission approvals. It states:

- a. Approval of this Agreement to the extent, if any, required by Government Code Section 65869, including with respect to its terms regarding the acquisition, conveyance, and deed restriction of the adjacent Goodell Property.

The first-quoted passage evinces an intent by the City and the property owner to pursue compliance with Government Code section 65869 via subsection (1) – that is, "applicability" of the Development Agreement is contingent upon certification of the proposed LCPA.

Thus, the Development Agreement will be consistent with Government Code section 65869 if the proposed LCPA is approved and certified as submitted, as is recommended. If the proposed LCPA is not approved and certified as submitted, the Development Agreement may need to be amended to

comport with any suggested modifications which the City accepts with respect to the LCP amendment in order to comply with Government Code section 65869(1) or else will not become effective unless it is approved by separate action of the Coastal Commission per Government Code section 65869(2).

## **B. LUP AND COASTAL ACT CONSISTENCY**

An amendment to the Land Use Plan (LUP) portion of a certified LCP must be consistent with the Chapter 3 policies of the Coastal Act. (Pub. Res. Code § 30152(c).) An amendment to the Implementation Plan (IP) portion of the certified LCP must be consistent with the policies of the certified LUP. (Pub. Res. Code § 30513.) The relevant Chapter 3 policies with respect to the proposed LUP amendment and the relevant LUP policies (as proposed to be amended) with respect to the proposed IP amendment (the Windward Specific Plan) are those addressing priority of use, protection of cultural resources, protection of sensitive habitat, and maximization of public access and recreation.

### **1. Priority of Use**

Coastal Act Section 30210 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.*

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 30222 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.*

Coastal Act Section 30223 states:

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

Section 30210 requires that public access and recreational opportunities be maximized. Sections 30213, 30222 and 30223 of the Coastal Act establish a higher priority for public recreational uses over lesser priority uses such as residential, office or general commercial with respect to coastal land; and that upland areas necessary to support recreational uses be reserved for such use, where feasible.

In addition, the certified Land Use Plan/Coastal Element contains the following policies:

C 3.1.3

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

C 3.2.1

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

These LUP policies also establish a higher priority for public recreational use over private residential use with respect to coastal land.

The above policies prioritize recreation and visitor serving uses over other lower-priority uses such as residential, office or general commercial within the coastal zone. Typically, land that is designated for recreational use is specifically identified for such use as a matter of land use or zoning because its location and attributes especially lend itself to recreational opportunities. These locations may be near the beach, near public trails, offer wildlife and coastal view opportunities, and/or are located in an area known as a visitor destination. Of course, not all land within the coastal zone is designated for visitor and/or recreational use. Non-recreational land use and zoning designations are allowed within the coastal zone. However, this underscores the importance of promoting and retaining recreational use over lesser priority uses at those sites designated for recreational use. Land may be designated Open Space Parks within the City's certified LCP to allow passive recreation, such as trail use, bird watching, taking in the views, etc. when adjacent to or near sensitive habitat, such as the case with the subject site. However, as previously discussed, the subject site also has a Residential Agriculture-Coastal Zone overlay (RA-CZ) zoning designation, which is not consistent with the Open Space-Parks land use designation for the site and would allow limited residential use (one dwelling unit per five acres) at the site. While recognizing that the land use and zoning designations need to be reconciled for this site, considering the land use priority policies of the Coastal Act and LUP identified above, any change of allowable land use within Open Space Parks designated areas, such as the site here, must be carefully considered.

One of the issues of the previous LCPA requests for the subject site was that no other entities, public or non-profit, had been approached to ascertain interest in retaining the site in open space prior to the property owner's and the City's proposal to convert the site from the higher priority Open Space Parks land use designation to the lower priority residential designation. However, this issue has been addressed in the currently proposed LCP amendment. The Trust for Public Land (TPL) and the Bolsa Chica Land Trust (BCLT) are currently in the process of raising the funds to purchase the entire site and adjacent Goodell property outright. Acquisition of both the entire 5-acre subject site and the adjacent 6.2-acre Goodell property by a non-profit entity is recognized as one of the two possible Alternatives in the proposed Windward Specific Plan. The property owner, Signal Landmark Company, has entered into an option agreement with the TPL to allow the purchase by TPL of both the entire Windward and Goodell properties (the Acquisition Alternative). Under the option agreement, the property owner has made the Windward and Goodell properties available for purchase by the TPL since April 2016. Currently the option agreement deadline is December 31, 2018, but the landowner has indicated that deadline will be extended to April 30, 2019, which would provide TPL with an additional four

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months and a total of three years to raise the necessary funds<sup>5</sup>. Thus, retention as open space has been considered and pursued, where it was not under the previous two LCPA requests for the subject site. In addition, even if the two properties are not acquired, the proposed Specific Plan provides for the second alternative, which would result in open space preservation of half of the subject site as well as the neighboring 6.2-acre Goodell property in open space. Under the second alternative, the Development Alternative, the Specific Plan would allow residential development on the western 2.5 acres of the site ONLY when the eastern 2.5 acres of the site and the entire Goodell property are preserved in open space. These requirements are reflected in both the proposed land use plan text amendment (cited below) and in the proposed Windward Specific Plan.

The LUP amendment proposes to add new subarea 4M Windward to the existing LUP Table C-2 *Community District and Subarea Schedule*. The proposed new subarea 4M describes permitted uses and design and development standards and principles allowed within the subarea (See Exhibit 3c for complete proposed LUP text). Proposed language for subarea 4M includes the following language (in part):

*“The property is subject to the Windward Specific Plan and ...*

*The Windward Property is adjacent to a parcel of land located within the County of Orange and not subject to regulation by the City which is commonly known as the “Goodell Property.” The purpose of the Windward Specific Plan is to provide a comprehensive planning program to direct the development of the residential, and, through preservation, open space areas within the Windward Property.*

*The Specific Plan provides contingencies that, even after the LCPA for the Windward Property has (i) been certified, (ii) become effective, and (iii) become final, the LCPA’s residential land use designation for the Windward Residential Parcel shall not become operative unless and until both the Windward Open Space Parcel and the Goodell Parcel have been deed restricted to open space and resource conservation uses and either conveyed or offered for conveyance to a public agency or a non-profit organization approved by the City. The prerequisites, terms, and conditions relevant to these actions are set forth in the Specific Plan and Development Agreement.*

*In the event the Windward Specific Plan does not become operative as described in that document, the uses permitted in subarea 4M shall be limited to Open Space-Parks and/or Open Space-Conservation.”*

The Windward Specific Plan provides very specific details regarding the mechanisms that must be in place before residential development may proceed at the Windward site. The Specific Plan provides for a two alternative path: the Acquisition Alternative and the Development Alternative (described earlier). The Acquisition Alternative provides an opportunity to preserve both the entire Windward and Goodell properties for open space and conservation uses only. Thus, one of the concerns raised by the previous two LCP amendment requests for the site, pursuit by parties (governmental and/or

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<sup>5</sup> The property owner, Signal Landmark Company, has indicated that an extension of the option agreement deadline to April 30<sup>th</sup> 2019 will be executed prior to the Coastal Commission’s December 12, 2018 hearing.

non-profit) interested in acquiring the sites as a means of retaining the open space use at the entire site, is addressed in the proposed amendment.

Under the second alternative (Development Alternative), residential development would be allowed on the western 2.5 acres of the Windward site (called the Windward Residential Parcel in the Specific Plan) ONLY when the eastern 2.5 acres of the Windward site (called the Windward Open Space Parcel in the Specific Plan) AND the Goodell Property have BOTH been deed restricted and conveyed (or irrevocably offered for conveyance) for open space and resource conservation uses only. These requirements are also reflected in a Development Agreement entered into between the Windward property owner and the City. How these mechanisms are to be implemented is outlined in detail in Chapter 5 *Administration and Implementation* of the proposed Specific Plan.

One of the concerns with the earlier LCP amendment requests submitted for the subject site was that those amendments requested the land use designation change from the higher priority use Open Space Parks to Residential BEFORE preservation of any open space was assured. That is, the Open Space Parks use would have been lost upon conversion of the land use designation with no measures in place to assure the loss would be offset. However, the currently proposed amendment identifies specific steps that must be in place to preserve open space BEFORE the Open Space Parks land use designation is changed for the Windward Residential Parcel. If the eastern 2.5 acres of the Windward site and the entire 6.2 acres of the Goodell Property are not properly restricted for open space and conservation prior to the land use change, residential development may not proceed under the proposed Specific Plan. That is, if the open space and conservation protections under the Windward Specific Plan do not become operative, the uses permitted in subarea 4M remain limited to Open Space – Parks and/or Open Space – Conservation only. However, in the event the proposed Windward Specific Plan does become operative, it would result in 2.5 acres of residential development (the Windward Residential Parcel) and 8.7 acres of preserved open space (the Windward Open Space Parcel and the Goodell property).

Therefore, the Commission finds that the proposed LUP amendment, including the language proposed to be added to Table C-2 regarding new subarea 4M Windward, is consistent with the Coastal Act policies regarding priority of use. Likewise, the Commission finds that the proposed IP amendment, including the addition of the Windward Specific Plan (Specific Plan No. 16) is in conformance with and adequate to carry out the policies of the certified LUP regarding priority of use.

## **2. Protection of Cultural Resources**

Section 30244 of the Coastal Act 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 Land Use Plan includes Goal C 5, which states:

*Promote the preservation of significant archaeological and paleontological resources in the Coastal Zone.*

Also, the City's certified Land Use Plan also includes Objective C 5.1, which states:

*Identify and protect, to the maximum extent feasible, significant archaeological, paleontological and historic resources in the Coastal Zone.*

LUP Policy C 5.1.2 states: “Where new development would adversely impact archeological or paleontological resources within the Coastal Zone, reasonable mitigation measures to minimize impacts shall be required.”

The standard of review for the LUP amendment is consistency with the Chapter 3 policies of the Coastal Act, including Section 30244 regarding protection of archaeological resources. The standard of review for the IP amendment is conformance with and adequacy to carry out the policies of the certified LUP (as proposed to be revised herein), including those cited above regarding protection of archaeological resources. Both these LUP standards and Coastal Act Section 30244, cited above, require protection of cultural resources and reasonable mitigation for unavoidable impacts. The presence of significant cultural resources has been documented throughout the Bolsa Chica Mesa, including on the subject site and adjacent Goodell Property. Commission staff contacted six local Native Americans, speaking with two and leaving messages for four. Commission staff spoke with Anthony Morales of the Gabrielenos, and Joyce Perry of the Juanenos. Neither expressed objections to the proposed LCP amendment. As of the date of finalization of this staff report, the other Native Americans have not responded to Commission staff messages.

Extensive use, including seasonal occupation, manufacture of unique coggled stone and other artifacts, ceremonial and burial use, by native people is documented throughout the Bolsa Chica Mesa, dating back 9,000 years before present time. The Bolsa Chica Mesa as a whole has a rich archaeological past with several mapped archaeological sites.

The Bolsa Chica Mesa, where the subject site is situated, is an irreplaceable significant cultural resource. According to the December 2013 eleven volume final archaeological report prepared by SRS, Inc., as required by the Coastal Commission<sup>6</sup> in approving two archaeological sites on the adjacent Brightwater project site, ten prehistoric archaeological sites have been recorded on the Bolsa Chica Mesa and approximately the same number of recorded sites are on the Huntington Mesa, located south of the Bolsa Chica Lowlands. Volume 11: *Chronology and Cultural Implication* of the final report indicates that the numerous archaeological sites within the Bolsa Bay region were used at various time periods, beginning approximately 9,000 years ago. Some sites were used only in a single time period, such as ORA-85 and ORA-86, while other archaeological sites experienced sporadic re-use, for both seasonal occupation and permanent habitation, over thousands of years. Additionally, on some sites where pre-historic semi-subterranean house pit structures were no longer being used, the site continued to be used for new burials.

The most significant of the archaeological sites on the Bolsa Chica Mesa is ORA-83. ORA-83, known as the Coggled Stone Site, was continuously occupied for over 7,500 years, beginning approximately 9,000 years ago. It is listed in the National Register of Historic Places by the National Park Service at the recommendation of the State Historic Resources Commission and

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<sup>6</sup> The final archaeological report prepared by SRS, Inc. was required by the Coastal Commission pursuant to CDPs 5-89-772 and 5-05-020.

the State Historic Preservation Officer. As stated above, the Mesa contains several mapped archaeological sites; CA-ORA-83, -85, -86 and -144. These archaeological site numbers are discrete identifiers that are assigned for recording convenience. In fact, many archaeologists believe that ORA-86 on the subject Windward site is the northeastern extension of ORA-83. According to the State Historic Preservation Officer, as well as several archaeologists and Native Americans, these separate archaeological sites are a part of a large prehistoric village complex that occupied the upper banks of the Bolsa Chica Mesa from 9,000 to 2,000 years before present time. During this lengthy occupation period, there were no boundaries marking these sites and portions of the entire Bolsa Chica Mesa were used at some points in time. The significance of the Bolsa Chica Mesa as a cohesive landscape or Traditional Cultural Property is partly borne out by the rare, unique and prolific resources found on the property. The archaeological site complex also holds great spiritual meaning to Native American descendants who consider the land sacred given the number of burials. Although ORA-83 is known as the cogged stone site because these unique discoidal carved stones were believed to have been manufactured there, the site is actually much more complex and is the site of permanent human habitation as well as a sacred burial site or Native American cemetery. On ORA-83 and ORA-85 alone approximately 350 prehistoric cultural features were discovered, including approximately 160 human burials and 31 animal burials, 25 semi-subterranean structures (house pits with hearths, storage sheds, and ceremonial structures with a dance floor), fire affected rocks and other rock artifacts, shell and rock cairns, and well over 100,000 beads, charm stones, tools and other artifacts. It should also be noted that of the Native American and animal burials and prehistoric features that were discovered on the Bolsa Chica Mesa, more than 70% of them were found outside of the boundaries of the recorded archaeological sites.

Although 11-acres of the 9,000 year old permanent village and cemetery site known as ORA-83, all of the 4,500 year old village and cemetery site known as ORA-85 and most of the 2,000 year old village complex that extends onto the subject Windward site (as well as on the adjacent Sandover site) have been destroyed by residential development or to make way for residential development, the Bolsa Chica Mesa still has tremendous value as a Traditional Cultural Property.

Beginning in the early 1980's, the property owner, Signal Landmark, was granted several coastal development permits to investigate CA-ORA-83, as well as other archaeological sites on the mesa such as CA-ORA-85, "The Eberhart Site", and that portion of ORA-86 site, not including Goodell and Windward properties. The coastal development permits for this work were approved in the early 1980s and 1990s, and allowed full excavation of all existing on-site archaeological resources. This work was carried out over a 20 year period and was completed in 2006.

The Goodell property contains archaeological site, CA-ORA-144, "The Water Tower Site", so named in recognition of a water tower structure that was historically on the site until the 1980s. Moreover, some archaeologists also consider the Goodell site to be the north-eastern portion of the highly significant 9,000 year old archaeological site CA-ORA-83, "The Cogged Stone Site". The Windward property owner's archaeological consultant, Scientific Resources Surveys, Inc. (SRS) who has been conducting the archaeological research on the Bolsa Chica Mesa for decades, has agreed that the Goodell Property is a part of "The Cogged Stone Site" ORA-83.

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Therefore, given the cultural resources of the Goodell site, it is questionable as to how much, if any, of that site would be appropriate for residential development.

On September 11, 2013 the Commission determined that excavation and removal of intact cultural remnants of a pre-historic house pit structure containing a hearth, fire-affected rock, tools, ornaments and other artifacts and intact cultural midden soils within a known significant archaeological and cultural site occurred at the Windward site without the necessary coastal development permit (CCC-13-CD-08, Signal Landmark). The archaeological report for the subject Windward site (prepared by the same archaeologist for the Brightwater site, SRS) indicates that the individual or family who occupied the house-pit on the Windward site used tools from the much older ORA-83 archaeological site. The pre-historic house pit structure and related cultural remnants straddled the boundary between the Windward and Goodell sites, near their eastern property lines. Both properties contain the known archaeological site CA-ORA-86. In conjunction with the related Consent Orders, the owners of the Windward and Goodell properties have agreed, among other things, to undertake a mitigation project on the two properties to promote conservation of Native American cultural resources in coastal Orange County. The proposed Specific Plan Development Alternative and the Acquisition Alternative would both accommodate the mitigation project.

Given the rich cultural heritage of the Bolsa Chica Mesa, it becomes clear that any residential use at the site must not be allowed if it would adversely impact any culturally significant resources that remain on the site. Typically, an open space designation is most protective of a cultural resource area. The LCPA Specific Plan Development Alternative proposes to reduce the open space designation at the site by half (via creation of the Windward Residential Parcel and the Windward Open Space Parcel). The issue of lost open space that would have served to protect remaining cultural resources at the site was raised under the earlier LCPAs for the subject site. At that time the land use designation and zoning across the entire 5-acre site was proposed to be changed from open space to residential. Any cultural resources discovered would have been removed and curated off-site. And, in the event human burials were discovered, the earlier LCPAs would have allowed these sacred remains to be excavated and re-buried outside the development footprint. Off-site curation in a museum and excavation, relocation, and reburial of human remains, was then proposed as mitigation for impacts to cultural resources, in order to make way for residential development.

In addition, no development setback from the known pre-historic house pit structure would have been accommodated with the earlier LCPA requests. Likewise, the required mitigation for the unpermitted removal of the pre-historic house pit structure would not have been accommodated on the subject site. Rather, residential development would have been allowed across the entire 5-acre site. These were among the reasons Commission staff was recommending denial of the earlier LCPA.

However, as stated above, the proposed LUP language included in Table C-2 makes clear that residential development at the Windward site may only occur consistent with the requirements described in the proposed Windward Specific Plan. The proposed Windward Specific Plan will only allow residential development under the Development Alternative (Development Alternative), which is only possible if the Acquisition Alternative does not occur. If the

Development Alternative is pursued, the Specific Plan (Section 3.7. A *Cultural/Archaeological Resources*) provides detailed steps to be implemented as necessary to assure protection of cultural resources that may be present on site, including: prior to any site development, an Archaeology Mitigation and Monitoring Plan, prepared by a qualified archaeologist, must be submitted with an application for a coastal development permit; controlled archaeological grading<sup>7</sup> is required across the entire site where any project grading or earthwork is undertaken; recognizing that, in the event cultural resources are discovered, preservation in place, in consultation with the appropriate Native American(s) is the preferred action where appropriate and feasible; specifying that any approved development footprint shall not constrain on-site preservation options; requiring all controlled archaeological grading to be monitored by Native American and archaeological monitors; and establishing specific measures to be implemented in the event cultural resources are exposed; among others. None of these measures were included in the previously proposed LCPA requests. Moreover, previous archaeological studies of the site indicate that the western half of the site is disturbed/highly disturbed, whereas much of the eastern portion of the site retains its natural stratigraphy or relatively intact stratigraphy<sup>8</sup>. The prehistoric house pit discovered at the Windward site was located near the eastern border. The archaeological requirements of the proposed Specific Plan will allow significant cultural resources that may be present on the site to remain in place when appropriate and feasible. As proposed, the Specific Plan acknowledges that any development footprint (i.e. the area within the 2.5 western acres to be designated and zoned residential), may need to be reduced or otherwise modified to accommodate preservation on site.

In addition, by limiting the residential footprint, should the Development Alternative be pursued, to the western 2.5 acres of the site, the location of the removed pre-historic house pit structure will not be further disturbed by development and an appropriate buffer distance from the removed pre-historic dwelling structure will be accommodated. Moreover, the open space portion of the Windward site will accommodate the mitigation required by the Coastal Commission enforcement action taken to address the unpermitted removal of the pre-historic house pit. These measures also were not included in the earlier LCPA requests.

Therefore, the Commission finds that the proposed LUP amendment, including the language proposed to be added to Table C-2 regarding new subarea 4M Windward, is consistent with the Coastal Act policies regarding protection of cultural/archaeological resources. Likewise, the Commission finds that the proposed IP amendment, including the addition of the Windward Specific Plan (Specific Plan No. 16), is in conformance with and adequate to carry out the policies of the certified LUP regarding protection of cultural/archaeological resources (including as proposed to be amended herein).

### **3. Protection of ESHA**

Section 30240 of the Coastal Act states:

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<sup>7</sup> Controlled archaeological grading consists of using mechanized equipment where the upper soil layers are removed in approximately two centimeter depth increments by a mechanical scraper, under the supervision of the archaeological site supervisor. The grading process is limited to slow excavation in small horizontal areas of individual swaths the width of the mechanical scraper blade in order to maximize the opportunity for discovery of cultural artifacts present on site. The archaeologist(s) and Native American monitor(s) examine the soils as they are exposed.

<sup>8</sup> 2013 Archaeological Abstract Assessment of Excavations on CA-ORA-86 Bolsa Chica Mesa, Huntington Beach, CA", prepared by SRS, Inc.

- (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.*

In addition, the certified Land Use Plan includes policy C-7 1.3 which incorporates the same requirement that development adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade the ESHA and that the development be compatible with the continuance of the ESHA.

The Windward site is surrounded by sensitive habitats, including ESHAs recognized by the Coastal Commission and the California Department of Fish & Wildlife, among others. There is a grove of trees located approximately 150 feet east of the Windward site's eastern property line, on the Parkside Property. This grove of trees was found by the Commission, based on extensive research included in Parkside LUPA file, to be Environmentally Sensitive Habitat Area (ESHA) in its actions on the Parkside LUPA, the Parkside IP amendment, and the Parkside coastal development permit.<sup>9</sup> This grove of eucalyptus trees is also recognized in the City's certified LCP as ESHA.

The Bolsa Chica Mesa must also be viewed in the larger context of its role in the upland/wetland ecosystem. According to both the California Department of Fish & Wildlife and the U.S. Fish & Wildlife Service, the Bolsa Chica Mesa and the lowland wetlands are biologically interdependent. Together with the Bolsa Chica wetlands, a part of the roughly 1,300 acre Bolsa Chica Lowlands, the mesa communities which include both the Bolsa Chica Mesa and the Huntington Mesa to the south of the Lowlands, combine to make this area an important upland-wetland ecosystem. These biological interdependencies are vital to maintaining biological productivity and diversity. However, it must also be recognized that over the years, this resource area has declined due to human impacts and development pressures.

### **Raptor Foraging Area**

Upland areas within the Bolsa Chica region, such as the Windward site, provide raptor foraging area. Raptor foraging area is necessary to maintain the viability of the overall Bolsa Chica ecosystem. The extent of continuing use of the eucalyptus ESHA by the raptors is directly related to the amount of viable foraging area available from the ESHA trees. Because its use by a suite of raptors is what makes the grove of trees ESHA, raptor foraging area is necessary to support the ESHA and assure its continuance. Although the ESHA trees would continue to provide nesting, roosting and a base from which to forage, as surrounding raptor foraging area is lost, the ESHA's ability to support the raptors diminishes because the food sources decrease. If raptor use of the trees declines, the value of the ESHA is degraded and continuance of the ESHA is not assured.

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<sup>9</sup> City of Huntington Beach Land Use Plan Amendment No. 1-06, City of Huntington Beach Implementation Plan Amendment 2-10, and Coastal Development Permit 5-11-068 (Shea Homes).

One way the Commission has addressed the question of preserving foraging area in previous actions (such as the Brightwater and Parkside projects described above), has been to preserve some habitat area (including raptor foraging area) by establishing a buffer area. A buffer area around the ESHA is necessary to assure that adjacent development is compatible with the continuance of the ESHA. A buffer area requires that development adjacent to the ESHA be set back an appropriate distance from the ESHA. A buffer setback area is intended to locate 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. Implementing an appropriate buffer area reduces both human impacts on the ESHA (such as noise, light, and physical human and pet intrusion), as well as the impacts that would accrue due to loss of sufficient foraging area necessary to support the raptors that use the ESHA.

In its action on the Parkside project east of the subject site, the Commission found that a buffer setback distance of a minimum of 300 feet from the dripline of the eucalyptus ESHA was appropriate to protect the ESHA and assure its continuance. The Commission found this setback distance appropriate for other eucalyptus grove ESHAs in the project vicinity, including a second eucalyptus ESHA on the Parkside site and eucalyptus ESHA on the Brightwater site.

If the same 300 foot buffer setback distance were applied at the Windward site, it would result in a development setback from the eastern property line of approximately 150 feet, except in the northernmost portion of the Windward site where the ESHA is more distant. However, to protect raptor foraging habitat, the California Department of Fish & Wildlife recommends that one-half acre of foraging habitat be preserved for every acre impacted by development<sup>10</sup>. On the 5-acre Windward site, this ratio would result in about 1.25 acres of open space preserved for raptor foraging. Preserving the eastern 2.5 acres of the Windward site, as is required in the proposed Specific Plan, would provide a roughly 200 foot setback along the entire eastern property line and thus would establish both the 300 foot setback from the eucalyptus grove ESHA and also preserve more than one half-acre of foraging habitat for every acre that would be lost to development. As proposed, the Windward Specific Plan would preserve the eastern 2.5 acres of the site, the area adjacent to the Parkside site, as open space. Thus, the recommended buffer and foraging area will be provided under both the Acquisition Alternative (which would preserve the entire site from development) and Development Alternative of the LCP amendment as proposed. In addition, the proposed Specific Plan requires preservation of the entire 6.2-acre Goodell property too, providing significantly more raptor foraging area.

### **ESHA's Water Source**

In past consideration of the formerly contemplated Ridge LCPA (withdrawn), concerns were raised regarding the impacts from residential development on the adjacent Eucalyptus ESHA. These concerns related to alteration to the site's drainage pattern from development, and consequently alteration to the water source that feeds the ESHA. Most of the storm water runoff from the subject site currently drains to the lower third of the ESHA. The previously contemplated Ridge LCPA, would have devoted the entire 5-acre site to residential development, and directed all site stormwater runoff to the Brightwater storm drain system, eliminating site

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<sup>10</sup> The Commission followed this CDFW recommendation in its approval of Coastal Development Permit 5-97-367-A1 (Hellman).

drainage to the ESHA. Under that scenario, the overall storm water runoff resource that feeds the wetlands would have been reduced by approximately 50%. If the Windward site's drainage were to be directed away from the ESHA in the manner as proposed under the Ridge LCPA, it would have had an immediate impact on the forest's largest trees and numerous saplings.

Such a reduction in drainage to feed the ESHA trees would have placed the ESHA in jeopardy, significantly degrading the ESHA, inconsistent with the requirements of Section 30240 of the Coastal Act and Policy C-7 1.3 of the City's certified LUP. Such a reduction in runoff would also affect the viability of the restored habitat on the Parkside site (discussed below).

However, unlike the previous LCP amendment contemplated at the subject site, the entire eastern 2.5 acres of the site is proposed to retain the current land use designation of Open Space Parks, and thus remain in open space, with virtually no change in drainage patterns. Still, impacts to the ESHA due to development on the western 2.5 acres must be considered. Hydrology studies were prepared for the proposed LCPA, (Stantec, 10/30/17 and 8/8/18), including preparation of pre- and post-development site hydrology maps and calculations. The hydrology maps depict the site drainage flow patterns now and with changes that would arise with residential development on the western 2.5 acres of the site. The hydrology studies indicate that development on the westerly half of the site would redirect drainage from an approximately 0.97-acre area to the Brightwater storm drain system. The topography of the 0.97-acre area is relative flat and is on the upstream end of the tributary area. Currently there is minimal runoff, if any, from this area of the site that would reach the eucalyptus ESHA and adjacent lowland area on the Parkside site. The hydrology consultant, Stantec, indicates that the volume of runoff expected from the site toward the ESHA post development would be expected to decrease from 67,422 cubic feet over two years to 66,242 cubic feet over two years, a reduction of approximately 1%. Stantec concludes this reduction would have insignificant to no impacts on the ESHA and lowland areas on the Parkside site. Most of the site drainage that currently drains to the ESHA comes from the eastern half of the site. The proposed Specific Plan would retain that area in open space, essentially unmodified, and thus the existing drainage pattern that currently feeds the eucalyptus ESHA is expected to be maintained.

### **Adjacent Habitat Restoration**

Immediately adjacent to the Windward site is the Parkside Property, abutting the Windward site's eastern property line. As a condition of approval for the Parkside project (Coastal Development Permit 5-11-068, Shea Homes) and as required by the City's certified LCP, the western 22 acres of the Parkside site is the subject of habitat restoration. This restoration area abuts both the Windward site and the Goodell Property. As required by the approved Habitat Management Plan for the Parkside project, the area adjacent to the Windward site will be restored with native grassland habitat. The area of the Parkside Property adjacent to the Goodell Property will be restored with coastal sage scrub habitat. A coastal sage scrub/grasslands ecotone transition area will be restored between the grasslands and coastal sage scrub habitats.

Because Parkside's restored habitat will be located immediately adjacent to the Windward site's eastern property line, a habitat buffer would necessarily extend onto the Windward site. Any future development at the Windward site would need to incorporate a setback for this adjacent

sensitive habitat restoration area. Such a setback on the Windward site would be coincident with the buffer area required to protect the eucalyptus ESHA described above.

Habitat buffer setback areas are imposed to protect the habitat from significant disruption, and to prevent impacts that would significantly degrade the habitat areas. The proposed LUP amendment will retain the Open Space Parks land use designation on the eastern 2.5 acres of the site. The Windward Specific Plan proposed in the IP amendment identifies this eastern 2.5 acres of the site, the Windward Open Space Parcel, as Coastal Conservation, allowing only open space and resource conservation uses. Thus, the 2.5-acre eastern portion of the site will provide the buffer area necessary to protect the adjacent habitat. Moreover, the proposed Windward Specific Plan requires that habitat restoration of the eastern 2.5-acre open space area be implemented with any future residential development (described below).

### **Southern Tarplant and Burrowing Owl**

The burrowing owl is one of the sensitive raptor species found on the Bolsa Chica Mesa. The California Department of Fish & Wildlife considers the burrowing owl (*Athene cunicularia*) a California Species of Special Concern. It hunts for prey in open grasslands and areas of ruderal vegetation. The burrowing owl uses the abandoned burrows of small rodents as shelter during the nesting and wintering seasons. The findings for approval of the Brightwater project (CDP 5-05-020) found that wintering burrowing owls use the Bolsa Chica Mesa during most years. The burrowing owl is in decline in most areas of California, especially in the coastal zone, due to the loss of habitat as a result of development and rodent control activities. The rapid decline of this species in Orange County has been chronicled in the latter half of the 20<sup>th</sup> century.<sup>11</sup>

The Southern tarplant is a Federal “Species of Concern” and listed as a 1B plant (Rare, Threatened, or Endangered in California and Elsewhere) by the California Native Plant Society (CNPS), and it also meets the CEQA Guidelines’ definition of rare, threatened, or endangered species. Southern tarplant is an annual plant that favors damp, disturbed areas and is generally restricted to grasslands, wetland edges, vernal pools, and alkaline flats in the coastal counties of southern California. Southern tarplant populations have been greatly reduced and fragmented by development. According to the Commission staff ecologist, Southern tarplant has become rare in California and its remaining habitat is particularly valuable due to the loss of its natural habitat.

In past actions, the Commission has found some Southern tarplant communities to be ESHA. In its action on the Brightwater project, the Commission identified Southern tarplant ESHAs and required a development setback/buffer area from the tarplant ESHAs of 50 feet. And in its action on the Brightwater project, the Commission found areas used by the burrowing owl to be ESHA and imposed a buffer setback from those areas. Because the presence of both species is difficult to determine at any given time due to the dormancy periods of Southern tarplant and the burrowing owls use of abandoned burrows of other animals, it is difficult to definitively ascertain their presence or absence on-site.

An Updated Assessment of Biological Resources was prepared by LSA Associates, Inc., dated 7/16/2018 for both the Windward and Goodell Properties. The 2018 Update considers the subject

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<sup>11</sup> Hamilton and Willick (1996) and Gallagher and Bloom (1997), according to Draft Subsequent Environmental Impact Report, Volume I, Brightwater Development Project, Orange County, California, SCH #1993071064, LSA, November 17, 2001, page 4.9-21.

site and the March 2010 Biological Resources Assessment and the April 1, 2016 Updated Assessment of Biological Resources. The 2018 Updated Assessment states:

*“LSA found nothing to suggest that any important biological resources or issues were omitted from discussion in the previous technical documents pertaining to the study area. Consequently, LSA believes the previous documents adequately identified the relevant biological issues for these properties, and subsequent years of observations have only furthered our understanding of those issues.”*

LSA’s 2016 Plant Communities Survey Map mapped only a small portion of the Windward site as “developed,” and the rest of the site was mapped as “Ruderal/Disturbed.” The 2016 Plant Communities Survey Map does identify 0.23 acre of Saltbush Scrub, 0.01 acre of Disturbed Coastal Sage Scrub, and 0.04- acre of Mulefat Scrub on the adjacent Goodell Property. The closest of these plant communities, the Mulefat Scrub, is located more than 150 feet from the area proposed to be designated for residential development on the Windward site under the Development Alternative. The disturbed Coastal Sage Scrub and the Saltbush Scrub are both located at the southern Goodell property line, at the opposite side of the site from the Windward site. See Exhibit 5 for the Plant Communities Survey Map.

Likewise, LSA prepared a 2016 Southern tarplant Survey (see exhibit 6). No Southern tarplant was found to be present on the Windward site at the time of the survey. LSA did locate several groupings of Southern tarplant during the 2016 surveys on the Goodell Property. These populations are shown on Figure 3 of the 2016 Biological Assessment, along with locations and quantities of Southern tarplant identified in previous years (2010 and 2009). This particular special-status plant species is often associated with highly disturbed conditions and occurs extensively in the vicinity of the study area. The closest Southern tarplant was located within approximately 100 feet from the Windward site, and was observed in 2016. The Biological Assessments (LSA) for the subject site recognize that, although none was found at the time of the surveys, the site could support Southern tarplant and the burrowing owl.

The proposed LUP amendment requires that the Windward site be subject to the requirements of the Windward Specific Plan. Under the Development Alternative, the Windward Specific Plan includes requirements to assure the protection of Southern tarplant in the event it is found to be present on the site at the time future residential development may be proposed. These measures include: a Southern tarplant survey must be conducted by a qualified biologist during the appropriate blooming season; the required survey shall be submitted with the coastal development permit application; if Southern tarplant is present on-site, appropriate measures to protect it must be considered as part of the CDP review; at a minimum, any substantial occurrence (at least 500 mature individuals) shall be preserved on-site or relocated to open space areas in the Bolsa Chica area; preservation on-site is preferred if appropriate and feasible. The Windward Specific Plan includes requirements to assure the protection of the burrowing owl in the event it is found to be present on site at the time future residential development may be proposed. These measures include: focused burrowing owl surveys must be conducted in accordance with the California Burrowing Owl Consortium and California Department of Fish & Wildlife established protocols; the surveys must be submitted with the CDP application; if the surveys reveal evidence of active burrowing owl(s) presence on-site, appropriate methods of

protection shall be considered as part of the CDP review; the residential development footprint identified in the Specific Plan shall not constrain on-site active burrowing owl protection options.

### **Windward Habitat**

In addition, the Windward Specific Plan requires that a detailed Habitat Management Plan (HMP) be submitted with the coastal development permit application for Windward residential development. The required HMP must describe and include, but is not limited to, plant types, planting locations, success criteria, protection methods for the burrowing owl, and Southern tarplant, methods of maintenance and monitoring and reasoning for expected success of the HMP. The Windward project developer is responsible for implementing the HMP. The Windward project developer will also be responsible for maintaining the habitat established under the HMP until sales of 90% of the Windward Residential units occurs, at which time the Windward HOA will be responsible for maintaining all public improvements unless and until the Windward Open Space Parcel is legally conveyed to an approved government agency or approved, qualified non-profit organization.

### **EHSA Protection Conclusion**

Therefore, the Commission finds that the proposed LUP amendment, including the language proposed to be added to Table C-2 regarding new subarea 4M Windward, is consistent with the Coastal Act policies regarding protection of sensitive habitats and ESHAs. Likewise, the Commission finds that the proposed IP amendment, including the addition of the Windward Specific Plan (Specific Plan No. 16) is in conformance with and adequate to carry out the policies of the certified LUP regarding protection of sensitive habitats and ESHAs (including as proposed to be revised).

### **4. Public Access & Trails**

The following Coastal Act Sections require public access and recreation be maximized:

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 30213 of the Coastal Act states (in relevant part):

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

In addition, the following policies of the certified LUP also promote public access and recreation:

Policy C 2.6.6

*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.*

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In addition, LUP Policies C 2.6.1 and C 2.6.2 require an offer of dedication of an easement in all new development to allow access to the shoreline or to public recreation areas or to public trails and bikeways (except under certain, specified cases, which do not apply here).

The proposed LUP amendment requires that development of the Windward site under the Development Alternative be consistent with the Windward Specific Plan. Regarding public access and recreation, the Windward Specific Plan requires a public trail that links the existing City owned public trail immediately north of the Windward site to a trail at the southern end of the Windward site connecting back to Bolsa Chica Street and also to future public trails on the Goodell site. The trail on the City property also links to the public access trails and recreational opportunities on the Parkside site to the east. The Specific Plan also requires public access and interpretive signage, a public bench and a lookout point. These will all be provided in the Windward Open Space parcel. Limited fencing to protect sensitive habitat is also allowed by the proposed specific plan.

The public trail on the eastern portion of the Windward site (Windward Open Space Parcel) would be located in an area that the Specific Plan would zone Open Space Conservation, in recognition of the sensitive habitat to the east and south of the site. Typically uses within open space conservation areas are limited to habitat preservation and restoration and very low impact uses. The proposed Specific Plan states (4.1 Windward Open Space and Resource Conservation Uses):

*“The zoning for the Windward Property is Specific Plan (SP-16-CZ), but within the Specific Plan the uses and restrictions of the certified LCP Implementation Plan (HBZSO) Chapter 216 Coastal Conservation District zone shall apply to the Windward Open Space Parcel, under the Development Alternative. The allowable uses common to both the City’s existing Open Space – Parks land use designation [which is the land use designation at the site] and the Coastal Conservation zoning are limited to pedestrian trails and observation platforms for passive nature study and habitat restoration. Consistent with those regulations, the uses for the Windward Open Space Parcel are limited to a public pedestrian trail, public access and interpretive signage, a public bench, a scenic overlook, habitat restoration, and limited fencing as necessary to protect habitat.”*

Under the proposed Specific Plan, the Windward Open Space Parcel will assure an appropriate buffer between future residential development and the sensitive habitat located to the east and south of the site. The public trail (and related uses such as public signage and a bench) within the area will allow low impact nature walks and public views of the surrounding open space. Moreover, the trail will allow linkages with other existing public trails of the Parkside and Brightwater developments, and to the levee trails nearby, as well as to the public trail system throughout the Bolsa Chica Ecological Reserve, and ultimately, to the public beach beyond.

Therefore, the Commission finds that the proposed LUP amendment, including the language proposed to be added to Table C-2 regarding new subarea 4M Windward, is consistent with the Coastal Act policies regarding maximizing public access opportunities. Likewise, the Commission finds that the proposed IP amendment, including the addition of the Windward Specific Plan (Specific Plan No. 16), is in conformance with and adequate to carry out the policies of the certified LUP regarding maximizing public access opportunities (including as proposed to be amended herein).

## **VII. CALIFORNA ENVIRONMENTAL QUALITY ACT (CEQA)**

The City of Huntington Beach is the lead agency for the purposes of California Environmental Quality Act review of the proposed LCP amendment. On May 21, 2018, the City issued a Mitigated Negative Declaration (MND 16-003) for the Windward Specific Plan and the proposed changes to the LUP and IP. Pursuant to the California Environmental Quality Act (CEQA) and the California Code of Regulations [Title 14, Sections 13540(f), 13542(a), 13555(b)] the Commission's certification of this LCP amendment must be based, in part, on a finding that it is consistent with CEQA Section 21080.5(d)(2)(A). That section of the Public Resources Code requires that the Commission's regulatory program require that a proposal not be approved or adopted 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.

The Commission finds that, for the reasons discussed in this report, the proposed LCP amendment complies with the California Environmental Quality Act because there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts which the LCP amendment may have on the environment. The Commission finds that the proposed LCP amendment is consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.