

CALIFORNIA COASTAL COMMISSION

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**W20b**

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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-17-0635

Applicant: Thankful Texans, LLC

Agent: Howard Anderson Architecture, Attn: Jaime Bernal

Location: Adams Street, Carlsbad, San Diego County
 (APN 206-200-03)

Project Description: Construction of an approximately 4,935 square foot, 2-story single-family residence with pool on a 20,347 square foot lagoon-fronting lot. Also proposed is dedication of a 25-foot wide easement landward of the mean high tide line for lateral public access along the lagoon and approximately 1,530 cubic yards of grading.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing construction of a single family residence on a vacant parcel along the north shore of Agua Hedionda Lagoon in Carlsbad. There are several special status plant species located along the shoreline on the site, and the site is located near parcels containing significant coastal sage scrub habitat. In addition, the site is located between the lagoon and Adams Street, a designated scenic roadway that offers expansive views of the lagoon, and is highly visible from lagoon waters and from Interstate 5. The certified Land Use Plan for this area also calls for continuous public access along the shoreline of Agua Hedionda Lagoon. As a result, staff is recommending approval of the project with a number of special conditions designed to protect neighboring sensitive habitat resources, water quality, visual

resources and cultural resources from adverse impacts, as well as to provide future public access along the lagoon shoreline.

To ensure the continued and improved habitat function of existing coastal sage scrub and the lagoon in this area, **Special Condition No. 2** requires the applicant to submit a revised landscape plan that uses primarily native, non-invasive plant species onsite. **Special Condition No. 3** requires the applicant to record an open space deed restriction establishing a 100 foot wetland buffer from the shoreline, which will protect all the sensitive plant species on site.

To provide future public access along the shoreline, **Special Condition No. 4** requires the applicant to record an offer of dedication of a 25-foot wide lateral access easement measured upland from the mean high tide line. Because the City of Carlsbad has not yet finalized a trails plan establishing the alignment, size, or composition of a contiguous lagoon trail on the north shore of the lagoon, **Special Condition No. 5** clarifies that the applicant shall be responsible for trail improvements when the City finalizes the master plan for the north shore of the lagoon, where the subject site is located, rather than making such improvements now. **Special Condition No. 6** requires recordation of a deed restriction against the property to notify future property owners of the conditions of this permit, including the future obligation to construct trail improvements. **Special Condition No. 7** requires the applicant to submit a public access signage program and install a sign along the easement when trail improvements are constructed in the future.

Because the site is located in a highly scenic area, the proposed home has been designed to sit below the elevation of Adams Street so that passersby can view the lagoon from the roadway. **Special Condition No. 1** requires submission of final plans reflecting this elevation limit. **Special Condition No. 2** requires the use of non-invasive trees planted along the lagoon-facing side of the home to screen the development from Interstate 5 and the lagoon waters. Finally, **Special Condition No. 8** requires the applicant to use earth tones in the materials and paint on the proposed structures to complement the natural hillside and further soften the visual impact of the proposed development.

The project also has potential to adversely impact water quality of Agua Hedionda Lagoon through erosion and runoff. To avoid these potential impacts, **Special Condition No. 2** requires landscaping to stabilize all graded areas, **Special Condition No. 9** requires submission of revised grading plans requiring all grading to cease prior to the rainy season, and **Special Condition Nos. 10** and **11** require the applicant to implement construction-phase erosion control best management practices and post-development drainage improvements.

Finally, a cultural and paleontological survey report prepared for the project identified cultural resources onsite. **Special Condition No. 12** requires submission of an archaeological monitoring plan requiring the presence of professional archaeologists and Native American monitors during soil disturbance. In addition, the condition requires that if cultural deposits are identified during construction, all work shall cease and significance testing shall occur to identify appropriate mitigation measures.

Commission staff recommends **approval** of coastal development permit application 6-17-0635 as conditioned.

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EXHIBITS

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[Exhibit 6 – Lateral Public Access Easement Area](#)

[Exhibit 7 – Approved Public Access Sign Design](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-17-0635 subject to the conditions set forth in the staff recommendation.*

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

Resolution:

The Commission hereby approves coastal development permit 6-17-0635 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

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

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Final Plans.

- (a) PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, final site and architectural plans approved by the City of Carlsbad that are in substantial conformance with the site and architectural plans by Howard Anderson Architecture dated June 15, 2018.
- (b) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

2. Revised Landscape Plans.

- (a) PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, revised final landscaping plans approved by the City of Carlsbad that substantially conform with the preliminary landscape plans by Earth Art Ltd. Dated June 20, 2018, except that they shall be modified as follows:
 - (i) A planting schedule that indicates that the planting plan shall be implemented within sixty (60) days of completion of construction.
 - (ii) All graded soils shall be stabilized with planting at the completion of final grading. Such planting shall be adequate to provide 90 percent coverage within two (2) years.
 - (iii) All proposed landscaping shall be drought-tolerant, native, fire resistant, non-invasive plant species that are obtained from local stock, if available, and which have been pre-approved by a Coastal Commission staff ecologist. Use of turf irrigated with potable water shall be minimized and irrigated with micro-spray systems. No plant species listed as problematic or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or

allowed to naturalize or persist on the site. No plant species listed as “noxious weed” by the State of California or U.S. Federal Government shall be planted or allowed to naturalize or persist on the site.

- (iv) The proposed stepping stones shall be removed or relocated outside the 100-foot wide wetland buffer.
- (v) Within the 100-foot wide wetland buffer, *Festuca californica*, *Mimulus cardinalis*, *Ceanothus griseus*, *Juncus patens*, and *Muhlenbergia rigens* shall be replaced with native, drought tolerant coastal sage scrub community species.
- (vi) Within the development footprint, *Tristaniopsis laurina*, *Vitex trifolia*, *Agave* “Blue glow”, *Aginozanthos flavidus*, *Leucadendron* safari sunset, and *Phormium* “Apricot Queen” shall be replaced with primarily native, non-invasive species. *Senecio mandraliscae* and *Senecio confuses* shall be replaced with native *Senecio* species commonly found in San Diego County. Trees along the frontage of Adams Street that would block views of the lagoon shall be eliminated.
- (vii) All existing non-native species onsite shall be removed, with the sole exception of non-native annual grasses, which shall be removed to the extent practicable if found in high densities onsite.
- (viii) The placement of a minimum of one non-invasive specimen size tree (24-inch box minimum) for every 20 feet of structure along the south-facing portion of the lot and arranged to maximize screening of the structure from views from Agua Hedionda Lagoon and Interstate 5 that has been pre-approved by the Coastal Commission staff ecologist. A minimum of 3 trees shall be provided lagoonward of the building pad for the proposed residence. The required trees shall be planted within 60 days of completion of residential construction and be maintained in good growing condition for the life of the residence. The plan shall also indicate that all landscaping including the required trees shall consist of species which do not reach sufficient height to block public views from Adams Street. Said landscaping shall be designed to mitigate the visual impact of the structure as viewed from the lagoon and Interstate 5.
- (ix) All landscaped areas on the project site shall be maintained in a litter-free, weed-free, and healthy growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- (x) Five years from the date of the issuance of the coastal development permit, the Permittee shall submit for the review and written approval of the Executive Director a landscaping monitoring report, prepared by a licensed Landscape Architect or qualified resource specialist, that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the Permittee shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or qualified resource specialist and shall specify measures to remediate those portions of the approved landscaping plan that have failed or are not in conformance with the original approved plan.

- (xi) The use of rodenticides containing any anticoagulant compounds is prohibited.
- (xii) All irrigation systems shall limit water use to the maximum extent feasible. Use of reclaimed water for irrigation is encouraged. If permanent systems using potable water are included in the landscape plan, they shall use water conserving emitters (e.g., micro spray) and drip irrigation only. Use of reclaimed water (“gray water “systems) and rainwater catchment systems are encouraged. Other water conservation measures shall be considered, including use of weather based irrigation controllers.
- (b) All revised landscape plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., landscape architect or resource specialist), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission’s approval and with the recommendations of any required technical reports as may be specified below.
- (c) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

3. Open Space Deed Restriction.

- (a) No development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area between the lagoon edge and 100 feet upland of the mean high tide line (currently estimated as 4.44 feet NAVD88) and as generally depicted on [Exhibit 4](#), except for:
 - (i) Installation, within the landward 50 feet of the buffer, of a sewer connection to support the development authorized by this coastal development permit, limited to the minimum amount of ground disturbance necessary and with the use of BMPs to protect water quality in accordance with Special Condition No. 10;
 - (ii) Native landscaping in accordance with Special Condition No. 2;
 - (iii) Brush management, within the landward 50 feet of the buffer, in accordance with Special Condition No. 2; and

- (iv) Improvements associated with the public access easement required by Special Condition No. 4, including the access path authorized by Special Condition No. 5, the signage program authorized by Special Condition No. 7, and any other improvements contained within the easement, as approved by the Coastal Commission as an amendment to this coastal development permit or by a new coastal development permit.
- (b) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space area. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area prepared by a licensed surveyor based on an on-site inspection of the open space area.
- (c) The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed.
- (d) The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.

4. **Lateral Public Access Easement.**

- (a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private entity, approved by the Executive Director, a lateral public access easement for public access and recreational uses in perpetuity. The easement shall be located along the entire width of the property along the Agua Hedionda Lagoon shoreline and shall extend 25 feet upland of the mean high tide line (currently estimated as 4.44 feet NAVD88), which is understood to be ambulatory from day to day, and as shown in [Exhibit 6](#), and shall include terms and conditions consistent with this permit, including Special Condition Nos. 5 and 7 of this permit. No development, as defined in Section 30106 of the Coastal Act, shall occur within the easement area except for the improvements authorized by this coastal development permit by Special Condition Nos. 3, 5, and 7.

The recorded document shall include a legal description and corresponding graphic depiction of the legal parcel subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the perimeter of the easement area prepared by a licensed surveyor based on an on-site inspection of the easement area.

The public access easement shall be ambulatory, and the easement boundaries and any future amenities (e.g., path, trail, benches, etc.) shall move inland within the permittee's property, if relocation and/or reconstruction of access amenities in the easement area are necessary to retain their continuity and/or utility. No development, except for an improved pedestrian pathway and associated trail amenities, shall occur within the above-identified easement.

- (b) The irrevocable offer to dedicate shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The document shall provide that the offer of dedication shall not be used or construed to allow anyone to interfere with any rights of public access acquired through use which may exist on the property.
- (c) The offer to dedicate shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity, and shall be irrevocable for a period of 21 years, such period running from the date of recording, and indicate that the restrictions on the use of the land shall be in effect upon recording and remain as covenants, conditions and restrictions running with the land in perpetuity, notwithstanding any revocation of the offer.

5. Public Access Improvements.

- (a) By acceptance of this permit, the applicant agrees for itself and its successors to the property to be responsible for future implementation and development, including but not limited to the planning, permit procurement, construction, and all costs associated therewith, of an improved path of a minimum of ten (10) feet in width or as specified in the citywide trails plan certified by the Commission in the future. The trail shall be suitable for use by pedestrians as specified by the public access document required pursuant to Special Condition No. 4 of this coastal development permit. Within 90 days after an approved entity has recorded an acceptance of the easement as required by Special Condition No. 4, or, if the City of Carlsbad has not already approved a final trails plan that proposes a trail for the property at that time, within 90 days of approval of the City of Carlsbad's final trails plan that proposes a trail for this property, the permittee shall submit plans for construction of the trail across the property for review and written approval of the Executive Director. The permittee shall implement the plans within 90 days of Executive Director approval. Said path shall be constructed in accordance with the City of Carlsbad's final trails plan for the north shore of Agua Hedionda Lagoon. The easement holder shall be responsible for maintenance of the trail.
- (b) Until submission of the trail plans to the Executive Director, no improvements within the area subject to the public access easement offer shall be permitted, unless otherwise authorized or required under the Coastal Act. Future public access trail improvements shall require an amendment to this permit or a separate coastal development permit, unless the Executive Director determines a permit or amendment is not legally required.

6. Deed Restriction.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

7. Public Access Sign Program.

- (a) PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a public access signage program that includes the following:
- (i) A public access sign of Commission-approved design, consistent with the approved design of the Agua Hedionda Lagoon Foundation signage program as shown in [Exhibit 7](#), and informing the public of the existing public access easement fronting the lagoon at the subject site shall be installed in an easily visible location at the easternmost end of the public access easement concurrently with future construction of trail improvements pursuant to Special Condition No. 5.
 - (b) The permittee shall undertake the development in accordance with the approved signage program. Any proposed changes to the approved signage program shall be reported to the Executive Director. No changes to the signage program shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Exterior Treatment.

- (a) PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a color board or other indication of the exterior materials and color scheme to be utilized in the construction of the proposed residence and accessory structures (fences and walls). The color of the structures permitted herein shall be restricted to colors compatible with the surrounding environment

(earth tones) including shades of green, brown, and gray, with no white or light shades and no bright tones except as minor accents.

- (b) The permittee shall undertake the development in accordance with the approved color board. Any proposed changes to the approved color board shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

9. Revised Grading Plans.

- (a) PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, revised final grading plans approved by the City of Carlsbad that substantially conform with the preliminary grading plans prepared by Sowards & Brown Engineering dated May 22, 2018, except that they shall be modified as required below.
 - (i) Grading shall cease and all erosion control BMPs shall be installed by November 1 of any year. If necessary, grading may resume on April 1.
- (b) All revised plans shall be prepared and certified by a licensed professions as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission’s approval.
- (c) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

10. Construction and Pollution Prevention Plan.

- (a) The permittee shall comply with Sheet 1 and Sheet 6 of the preliminary grading plans prepared by Sowards & Brown Engineering dated May 22, 2018, regarding erosion control during construction.
- (b) The permittee shall undertake development in accordance with these approved erosion control plans, unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

11. Post-Development Runoff Plan.

- (a) The permittee shall comply with the Priority Development Project Preliminary Storm Water Quality Management Plan prepared by Sowards & Brown Engineering, dated May 2, 2017, regarding water quality and post-development runoff plans.
- (b) The permittee shall undertake development in accordance with these post-development runoff plans, unless the Commission amends this permit or the

Executive Director determines that no amendment is legally required for any proposed minor deviations.

12. Cultural Resources Treatment and Monitoring Plan.

- (a) PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director an archeological/cultural resources monitoring plan prepared by a qualified professional, which shall incorporate the following measures and procedures:
- (i) The monitoring plan shall ensure that any prehistoric archaeological or paleontological or Native American cultural resources that are present on the site and could be impacted by the approved development will be identified so that a plan for their protection can be developed. To this end, the cultural resources monitoring plan shall require that archaeological and Native American monitors be present during all grading operations and subsurface construction activity that has the potential to impact cultural resources.
 - (ii) There shall be at least one pre-grading conference with the project manager and grading contractor at the project site in order to discuss the potential for the discovery of archaeological/cultural or paleontological resources.
 - (iii) Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, Native American monitor(s) with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading and subsurface construction activity (such as trenching for utilities) that has the potential to impact cultural resources, as required in the approved cultural resources monitoring plan required above.
 - (iv) The permittee shall provide sufficient archeological and Native American monitors to assure that all project grading and subsurface construction activities that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times.
 - (v) If any archaeological or paleontological, i.e. cultural deposits, are discovered, including but not limited to skeletal remains and grave-related artifacts, artifacts of traditional cultural, religious or spiritual sites, or any other artifacts, all construction shall cease within at least 50 feet of the discovery, and the permittee shall carry out significance testing of said deposits in accordance with the attached "Cultural Resources Significance Testing Plan Procedures" (Appendix B). The permittee shall report all significance testing results and analysis to the Executive Director for a determination of whether the deposits are significant.
- (b) If the Executive Director determines that the discovery is significant, the permittee shall follow the procedures in Appendix B to determine if an

amendment to this permit is required. If an amendment to this CDP is required, development within at least 50 feet of the discovery shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION/HISTORY

The subject property is a 20,347 square foot vacant lagoon-fronting parcel located along Adams Street on the north shore of Agua Hedionda Lagoon in Carlsbad, San Diego County ([Exhibits 1 and 2](#)). The site slopes from Adams Street south toward the lagoon. Adams Street is designated as a scenic roadway in the City's Agua Hedionda Land Use Plan because it offers expansive views of the lagoon. The project site is also highly visible from the lagoon waters and Interstate 5. The lot immediately to the east of the site is also vacant, however lots further east and the lot immediately to the west are developed with single-family residences.

The applicant proposes to construct an approximately 4,935 square foot 2-story single-family residence with attached garage and a pool. The City requires a 5 foot dedication along the entire frontage of Adams Street for future widening and street improvements. Approximately 1,530 cubic yards of grading is proposed. The applicant is proposing a 100-foot wide buffer between the proposed development and elevation 4.44 feet NAVD88, identified as the Mean High Tide Line (MHTL). Within the 100-foot wide buffer, the applicant is proposing to revegetate the slope. The applicant is also proposing to dedicate a 25-foot wide easement for public access immediately upland of the MHTL. All development is proposed to be set back 100 feet from the MHTL with the exception of some concrete stepping stones, which are proposed to be located as close as 22 feet upland of the MHTL and a proposed sewer line connection to an existing sewer pipeline that runs across the property parallel to the shoreline ([Exhibits 3 and 4](#)).

In May 1998, the Commission approved construction of a 4,100 square foot, 2-story, 30 foot high single-family residence on the lot adjacent to the subject site to the east (CDP No. 6-98-14/Huber). At that time, the applicant for that project owned three adjacent lots, consisting of the subject site, and the two adjacent lots to the east. The approved single-family residence would have been located on the middle lot. That project also included a 100-foot setback from the MHTL, and an offer to dedicate a 25-foot wide easement for lateral public access along the lagoon. However, the permit was never issued and has since expired.

On July 7, 2017, the City approved a Minor Habitat Management Permit (HMP 15-01) for the proposed project due to the site's location immediately adjacent to Agua Hedionda Lagoon, which is designated as Hardline Preserve in the City's Habitat Management Plan. Because Agua Hedionda Lagoon is an environmentally sensitive area and a major recreational resource, the lagoon and the viewshed surrounding the lagoon

was the subject of a detailed LCP Land Use Plan (LUP) prepared by the City and certified by the Coastal Commission in 1982. The subject property is within this LUP planning area, but an implementation plan for this area has not yet been certified. Thus, permit responsibility remains with the Commission and Chapter 3 of the Coastal Act is the standard of review, with the certified Agua Hedionda Lagoon LUP used as guidance.

B. BIOLOGICAL RESOURCES

Section 30231 of the Coastal Act states:

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

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Policy 3.13-1.11 of the City of Carlsbad Agua Hedionda Land Use Plan states in relevant part:

Buffers shall be provided between all preserved habitat areas and development. Minimum buffer widths shall be provided as follows:

- a. 100 feet for wetlands*

[...]

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

- a. Fuel modification Zone 3 to a maximum of 20 feet for upland and non-riparian habitat. No fuel modification shall take place within 50 feet of riparian areas, wetlands or oak woodland.*

[...]

Buffer areas that do not contain native habitat shall be landscaped using native plants. Signage and physical barriers such as walls or fences shall be required to minimize edge effects of development.

Policy 7-11 of the City's certified Habitat Management Plan also includes the above-cited language of Policy 3.13-1.11.

The project site is a lagoon-fronting hillside lot, which slopes toward the water's edge. Many of the surrounding properties to the west of the project site contain coastal sage scrub habitat; however, this particular lot contains no native vegetation on the majority of the site, with a few individuals of southwestern spiny rush and woolly seablite located at the southern portion of the site along the shoreline. Both species are considered special status plant species due to limited distribution within California.

No wetland vegetation exists on the site and no fill of or direct impacts to wetlands are proposed. However, the site is adjacent to Agua Hedionda Lagoon. Although the site does not contain any wetland vegetation, the Commission typically requires a 100-foot buffer between new development and the water's edge of the coastal lagoon, as does the certified LUP. Historically, the Commission has required that buffer areas remain undeveloped to provide open space between development and environmentally sensitive areas like Agua Hedionda Lagoon. This intervening space is intended to provide an upland area for animal and plant species that use the lagoon and establishes a distance between the lagoon resources and physical development, which reduces the potential for adverse impacts associated with development, such as runoff and siltation from grading, construction debris, and debris generated by disturbance from people and domestic animals.

The applicant is proposing a 100-foot wide buffer measured from the MHTL, shown as the 4.44 foot NAVD88 elevation ([Exhibits 3 and 4](#)). The upper boundary of the buffer would be at a retaining wall supporting a private pool area from the buffer. This buffer will protect the rare plant species identified along the shoreline. The 100-foot buffer proposed at this location is somewhat different than wetland buffers typically imposed by the Commission in other areas, because in this particular case, some development is required to be located within the buffer. Specifically, the applicant has proposed, consistent with the requirements of the certified LUP, to offer an ambulatory easement for public access consisting of the 25 feet landward of the MHTL (see Section IV.C. Public Access and Recreation for detailed discussion of the access easement). In addition, a 20-foot wide sewer easement and sewer pipeline currently runs below grade through this property within the 100-foot wetland buffer area. A sewer line is proposed to extend into the buffer from the home to connect to the sewer pipeline. To minimize impacts from that installation, **Special Condition No. 3** requires that placement of the sewer connection be restricted to the landward 50 feet of the buffer, the use of BMPs to protect water quality, and the minimization of ground disturbance as feasible. Finally, LUP Policy 3.13-1.11 requires landscaping of buffer areas with native landscaping, and prohibits brush management within 50 feet of a wetland. Once revegetated, the native plants between the home and the lagoon could pose a fire threat. The applicant's preliminary landscape plan shows brush management occurring in the upper 50 feet of

the buffer, consistent with Policy 3.13-1.11 and as required by **Special Condition No. 3**. Acknowledging that some activity will be occurring within the buffer, the Commission has permitted low intensity public improvements within the buffer along the lagoon (e.g., CDP Nos. 6-86-035/Abeledo, 6-98-14/Huber, 6-04-161/Steward).

However, the applicant has also proposed locating several pre-cast 19-inch concrete stepping stones within the buffer, which is inappropriate in a natural buffer area. Given that a portion of the buffer area is already expected to be used for public access, it is particularly important that the remaining buffer area be restored to and preserved in a natural state. Therefore, **Special Condition No. 2** requires the submittal of revised landscape plans eliminating any private improvements within the 100-foot buffer. The applicant is proposing to revegetate the buffer with native shrubs and grasses. The Commission's staff ecologist determined that this plant palette includes five species that are not typically found within a coastal sage scrub community, the prevailing native plant community along the north shore of Agua Hedionda Lagoon. To ensure that landscaping within the buffer area restores area habitat values and maintains scenic values in the area, **Special Condition No. 2** requires a revised landscape plan with more appropriate coastal sage scrub species. **Special Condition No. 3** requires that an open space deed restriction be placed over the buffer area to ensure no encroachments other than installation of a sewer connection to support the home, native vegetation, a future public access trail and required brush management occur within this area.

The landscape plan for the upper portion of the development, including the street frontage and around the house includes non-native ornamental landscaping. The Commission's staff ecologist identified eight species that may not be compatible with the native habitat in this area. To ensure that landscaping on the site will not adversely affect neighboring native habitat and the wildlife that depends on it, **Special Condition No. 2** also requires replacement of these species with more appropriate non-invasive, preferably native, species.

In summary, the project site contains a few special status plant species and is adjacent to Agua Hedionda Lagoon. Special conditions place a 100-foot open space buffer next to the lagoon, and require the use of a coastal sage scrub native plant palette within the buffer and a primarily native, non-invasive palette along the street front and within the developed portion of the site. As conditioned to eliminate private encroachments in the buffer, the Commission finds the setback adequate to protect the lagoon. Therefore, the project is consistent with the resource protection policies of the Coastal Act and the Agua Hedionda LUP.

C. PUBLIC ACCESS AND RECREATION

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Policy 7.3 of the City of Carlsbad Agua Hedionda Land Use Plan states:

All pedestrian trails shall be constructed to a minimum width of 5 feet. Combination bicycle/pedestrian trail shall be a minimum 10 feet wide.

Policy 7.5 of the City of Carlsbad Agua Hedionda Land Use Plan states in relevant part:

Bike route and pedestrian improvements shall be financed according to the following criteria:

[...]

(2) Routes adjacent to undeveloped properties shall be constructed at the expense of the developer at the time of development, or may be constructed by the City, subject to the availability of funding.

Policy 7.6 of the City of Carlsbad Agua Hedionda Land Use Plan states in relevant part:

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

Policy 7.8 of the City of Carlsbad Agua Hedionda Land Use Plan states:

All access ways should be designed to enhance recreational use, and should include adequate open spaces for light and air, adequate signing, inviting design, and provision of adequate buffer areas and buffer landscaping to minimize conflicts with adjacent private property. All lateral public access easements shall be at least 25 feet in width landward of the mean high tide line, unless infeasible due to extreme topographic limitation. The portion of the easement which is actually developed for access purposes may be less than the complete 25-foot width, provided that the developed area is sufficient to reasonably accommodate anticipated access demand. To meet these objectives, the following design criteria shall apply to all structures proposed to be located within 100 feet of any access easement or other public recreational use area:

a) All portions of such structures shall be set back from the point nearest any public use area a distance equivalent to twice the height of the structure above finished grade; and

b) New development shall provide landscaping adequate to minimize visual intrusion upon public use areas.

Policy 7.9 of the City of Carlsbad Agua Hedionda Land Use Plan states:

All public use areas shall be clearly identified through a uniform signing program, to be carried out by the City of Carlsbad or as a condition of individual private developments. Signs or other devices on public or private property which might deter use of public access areas shall be prohibited within the Agua Hedionda Plan area.

The project site is located on the north shore of Agua Hedionda Lagoon between Adams Street and the water's edge. Thus, the project site is located between the sea and first public roadway, where providing public access to the sea is a priority objective of the Coastal Act. Public access along and to the waters of Agua Hedionda Lagoon is an important resource because of the recreational nature of the lagoon – it is the only lagoon in San Diego County where water related recreational uses are permitted.

The certified Agua Hedionda LUP calls for the construction of a public access path along the shoreline of Agua Hedionda Lagoon. The City of Carlsbad's draft Trails Master Plan shows a trail that runs along much of the north shore of Agua Hedionda Lagoon, and includes the subject property as part of the location for a future open space trail. This would tie in with the proposed public access improvements that are part of the Interstate 5 widening project as part of the joint SANDAG and Caltrans North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Program (PWP/TREP). This plan proposes to replace the bridge located over Agua Hedionda Lagoon and to develop future public trails running north, south, east and west of the bridge. LUP Policies 7.5 and 7.6 state that the north shore trail is to be constructed by individual private developments as a condition of approval of obtaining a coastal development permit if the City or another organization does not build it. LUP Policy 7.8 identifies that access shall be provided along the north shore of Agua Hedionda Lagoon within a 25-foot wide easement upland of the mean high tide line.

The majority of the public access path that is called for in the certified LUP has yet to be constructed, due to the fact that a large number of north shore lagoon-fronting lots between Agua Hedionda and Adams Street, the designated first coastal roadway in this area, from I-5 to Bristol Cove (about 0.2 miles east of the subject site), are still undeveloped. Historically, the Commission's requirements for public access in this area have involved, as part of the conditions of approval of projects, a 25-foot wide lateral access offer to dedicate an easement along the lagoon-fronting portion of the project sites. Existing vertical public access is provided approximately 0.2 miles to the east at the terminus of Cove Drive and approximately 0.3 miles to the west at the terminus of Hoover Street in this area. In most cases, the Commission has required only that a public

access easement be recorded (e.g., CDPs 6-98-14/Huber, 6-00-080/Gallagher, and 6-04-161/Steward). In several cases the Commission also required construction of an improved accessway (e.g., CDPs 6-86-035/Abeledo and 6-96-159/Cade), although only the accessway on the Cade property has actually been constructed, in part, because in order to implement a contiguous, usable trail, the City needs to finalize the Trails Master Plan for this area and for the entire north shore of the lagoon through acceptance of public access easements and design of the trail. Therefore, the Commission's more recent practice has been to memorialize in conditions of approval that trail improvements shall take place within the dedicated easement area in the future.

In recognition of the requirements of the Agua Hedionda LUP and past Commission permit decisions in the area, the applicant proposes to dedicate a lateral public access easement to extend 25 feet upland and ambulatory from a MHTL elevation of 4.44 feet NAVD88. **Special Condition No. 4** memorializes the applicant's proposal and requires the proposed easement to be recorded in a form and content acceptable to the Executive Director. The easement area shall extend upland 25 feet from the MHTL which is understood to be ambulatory from day to day. Placement of the easement area is consistent with the setback requirement of Policy 7.6(a), as the distance between the path and the home, approximately 75 feet, is more than twice the 30 foot height of the proposed house.

As noted, the City has not yet completed its Trails Master Plan for this area of the lagoon. The property immediately east of this site has not yet been developed, and thus does not yet have a public access easement that would align with the easement across the subject site. In addition, on surrounding lots that do have recorded access easements, no trail improvements have been constructed to help determine where exactly on this parcel trail improvements should be made. The properties to the west of this site contain native coastal sage scrub habitat and steep slopes down to the lagoon, and trail improvements on these western lots would likely result in impacts to these resources. The subject site has a flatter grade at the toe of the slope adjacent to the lagoon and the site has been previously disturbed and graded, thus trail improvements on the subject site may be able to minimize or avoid impacts to native vegetation and steep slopes. However, without the complete assessment of the impacts involved with aligning the north shore trail on the subject site, without the consent of the adjacent property owner to the east to record a public access easement for future trail improvements, and without the City's finalized Trails Master Plan, it is not feasible at this time to ensure that a trail constructed on the subject site would align with a trail on either side of the site, minimize impacts to habitat and landform, and be consistent with the ultimate design for the trail as a whole.

The Commission finds that postponing the actual trail construction until the City's trail alignments are finalized and a comprehensive assessment of potential resource impacts is completed is preferable to allowing construction of a trail on the subject site at this time. Therefore, **Special Condition No. 5** holds the applicant responsible for future implementation of an improved access path within the public access easement, to be constructed in accordance with the City of Carlsbad's final trail plan for the north shore of Agua Hedionda Lagoon.

To notify future property owners of this responsibility, as well as of the other conditions of this permit, in the case that the applicant sells the property before the City finalizes its trail plans and the trail improvements on this site are required to be constructed, **Special Condition No. 6** requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. In addition, **Special Condition No. 7** requires the applicant to install public access signage that clearly informs the public of the trail at the time of construction of the trail improvements.

Therefore, as conditioned, the proposed development will improve public access along the shoreline through the dedication of a lateral public access easement and future construction of a trail that will be part of a contiguous access path along the north shore of the lagoon. As a result, the proposed development can be found consistent with all applicable policies of the Coastal Act and the certified LUP.

D. VISUAL RESOURCES

Section 30251 of the Coastal Act states in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Policy 8.3 of the City of Carlsbad Agua Hedionda Land Use Plan states in relevant part:

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

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

[...]

d) Any development proposed to be located on or near a significant landform (e.g., Hedionda Point) shall be designed so as to minimize disturbance of natural landforms, and shall be developed in a manner that assures its compatibility and harmony with the natural landform through use of such architectural techniques as terraced or pole foundations and variation of roof lines to complement the topography.

Policy 3.12 of the City of Carlsbad Agua Hedionda Land Use Plan states in relevant part:

Landscaping shall be utilized as a visual buffer and be compatible with the surrounding native vegetation and preserved open space. All development shall

be required to identify and implement a landscaping plan that provides for installation of plant species that are native or non-invasive and drought tolerant to the maximum extent feasible. Ornamental (non-invasive) vegetation shall be permitted within the interior of residential subdivisions only.

In response to Section 30251 of the Coastal Act, one of the issues addressed in the certified Agua Hedionda LUP is the preservation of views from Adams Street. Adams Street is a designated scenic corridor which runs along the north shore of the lagoon. The policies of the LUP require that development of lots which lie between Adams Street and Agua Hedionda Lagoon be designed to preserve the views from Adams Street. The policies require that all structures be sited below the elevation of Adams Street to allow passers-by to see over the structure to the lagoon and surrounding areas ([Exhibit 5](#)).

The roofline of the proposed single family residence will be below the elevation of the centerline of Adams Street. Thus, the project will not block any existing public views of the lagoon from Adams Street. However, approximately 1,530 cu. yds. of grading will be required in order to site the home below the elevation of Adams Street.

Section 30251 of the Coastal Act and Agua Hedionda LUP Policy 8.3(d) call for development to minimize disturbance of natural landforms. In this case, although site preparation will require a substantial amount of grading, construction of any structure on the lot would require a fair amount of grading. Construction of a one-story rather than a two-story home would reduce the amount of grading necessary, but the final appearance of the structure from surrounding public vantage points, such as the lagoon and northbound Interstate 5, would not be substantially different; in either case, the view of an existing vacant hillside will be replaced by a view of a house. Reducing the proposed house size or height would not reduce visual impacts. Therefore, since the amount of landform alteration will not affect the resulting visual impact of placing a home on this vacant hillside, and the proposed project, as conditioned, will ensure that views of the lagoon from Adams Street over the site will continue to be available, the project will be consistent with Policy 8.3 of the Agua Hedionda LUP.

However, the significant visual impact of the residence on the existing vacant hillside from public vantage points including the lagoon and northbound Interstate 5 ([Exhibit 5](#)) must be mitigated. The Commission has routinely required the use of trees to screen residential development located between Adams Street and the north shore of Agua Hedionda Lagoon while preserving views from the homes (ref. CDPs 6-98-14/Huber, 6-00-080/Gallagher, 6-04-59/Anastasi Development Company, 6-04-161/Steward; and 6-17-0613/Viola). The Commission finds special emphasis shall be placed on the use of trees to mitigate the visual impact of the proposed structure as seen from the lagoon and Interstate 5. **Special Condition No. 2** requires a revised landscape plan that shall indicate the placement of at least one non-invasive specimen size tree (24-inch box minimum) for every 20 feet of structure along the south-facing portion of the lot and arranged to maximize screening of the structure from views from Agua Hedionda Lagoon and Interstate 5. A minimum of 3 trees shall be provided lagoonward of the building pad for the proposed residence. The required trees shall be planted within 60 days of completion of residential construction and be maintained in good growing condition for the life of the

residence. The plan shall also provide for the use of species that do not reach sufficient height to block public views from Adams Street. Maintenance requirements to assure no blockage of public views must be incorporated into the approved plan.

Based on the project's location adjacent to an environmentally sensitive area, Agua Hedionda Lagoon, native trees are preferable in this location to maintain habitat and scenic values in this area. However, because the trees must be maintained at a height that will not block public views from Adams Street, while screening the development from the lagoon and Interstate 5, the use of native trees may not be feasible in this location. Therefore, **Special Condition No. 2** requires submittal of a revised landscape plan, using non-invasive trees. As the trees cannot be invasive species, the use of a small number of non-native plant species in this location is not expected to have any adverse impact on the sensitive resources of the area.

Because the structure cannot be fully screened through the use of vegetation without adversely impacting views of the lagoon from the home itself, **Special Condition No. 8** requires that use of a color palette for the structures that is consistent with the surrounding natural hillside.

Finally, the preliminary landscape plan includes several trees along the street frontage of Adams Street. Although street trees are typically required in residential neighborhoods, the City does not require street trees along Adams Street to preserve the protected lagoon views. **Special Condition No. 2** requires a revised landscape plan with trees eliminated along the street frontage to prevent adverse visual impacts. As conditioned, the Commission finds the project consistent with Section 30251 of the Coastal Act and the applicable policies of the Agua Hedionda LUP regarding scenic preservation.

E. WATER QUALITY

Section 30231 of the Coastal Act states:

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

Policy 3-14 of the City of Carlsbad Agua Hedionda Land Use Plan states in relevant part:

In addition to the requirements of the City of Carlsbad Drainage Master Plan, permitted development shall also comply with the following requirements:

- a. Grading activity shall be prohibited during the rainy season: from October 1st to April 1st of each year.*

- b. *All graded areas shall be landscaped prior to October 1st of each year with either temporary or permanent landscaping materials, to reduce erosion potential. Such landscaping shall be maintained and replanted if not well-established by December 1st following the initial planting.*
- c. *The October 1st grading season deadline may be extended with the approval of the City Engineer subject to implementation by October 1st of special erosion control measures designed to prohibit discharge of sediments off-site during and after the grading operation. Extensions beyond November 15th may be allowed in areas of very low risk of impact to sensitive coastal resources and may be approved either as part of the original coastal development permit or as an amendment to an existing coastal development permit.*

The proposed project also raises concerns regarding potential adverse impacts to water quality within Agua Hedionda Lagoon associated with runoff during and after construction of the proposed project. As proposed, the project includes four bio-filtration basins to collect and infiltrate runoff from the site. Calculations provided by the applicant indicate that these basins should be sufficient to infiltrate runoff from the site. The Commission's water quality staff have reviewed the drainage plans and concur that runoff associated with the project will not have adverse impacts to the lagoon.

However, proximity of this site to the lagoon and the amount of grading proposed poses a significant risk of erosion into the lagoon during construction, adversely impacting water quality. Agua Hedionda LUP Policy 3-14 prohibits grading during the rainy season between October 1 and April 1, but allows the October 1 grading season deadline to be extended if adequate erosion control measures are installed. To prevent potential impacts to water quality, **Special Condition No. 9** requires submission of revised grading plans requiring that grading must cease by November 1, and all erosion control best management practices must also be installed by November 1 to avoid impacts during the rainy season. If necessary, grading of the slope may resume on April 1. In addition, **Special Condition No. 2** requires the applicant to stabilize with plants all graded areas at the completion of grading. **Special Condition No. 10** requires the applicant to implement construction phase best management practices. Finally, **Special Condition No. 11** requires the applicant to comply with the Post-Development Runoff Plan submitted with the application. As conditioned, the Commission finds the project consistent with Section 30231 of the Coastal Act and the applicable policies of the Agua Hedionda LUP regarding protection of water quality.

F. 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.

A Cultural and Paleontological Resources Survey Report prepared for the project (Dudek 2014) identified fifteen potential cultural resource sites within a half mile of the project site and one cultural resource within the project development footprint. A large prehistoric marine shell and artifact scatter is located on the northern portion of the property within the project footprint. Given the slope of the parcel, and prior disturbance of the site and construction of the road, the report and a prior evaluation conducted by Gallegos and Associates (Schroth et al. 1996) concludes that the cultural resources are likely to have washed down slope and the surface artifacts are likely in secondary depositional locations. To ensure that any prehistoric, archaeological or paleontological cultural resources that may be present on the site and could be impacted by the proposed development receive proper protections, preferably avoidance, the Commission imposes **Special Condition No. 12**, which requires the applicant to submit an archaeological monitoring plan. The plan shall include provisions for both Professional Archeologists and Native American monitors to be present during soil disturbance and require work to stop if cultural deposits are discovered so that significance testing can be conducted. With these requirements in place, the Commission finds the project consistent with Section 30244 of the Coastal Act.

G. LOCAL COASTAL PLANNING

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

The Agua Hedionda LUP has been certified by the Commission, but no implementing ordinances have been submitted by the City for plan segment. Thus, the standard of review for this application is the Chapter 3 policies of the Coastal Act. As conditioned, the project is consistent with all applicable Chapter 3 policies of the Coastal Act and with the habitat protection, scenic preservation, and water quality policies of the certified Agua Hedionda Land Use Plan, and will not prejudice the ability of the local government to prepare a fully certifiable Local Coastal Program.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Carlsbad certified a Mitigated Negative Declaration (SCH No. 2017051043) for the project on July 7, 2017 finding that the project could have significant adverse effects on biological resources, cultural/paleontological resources and tribal cultural resources, but that those effects could be mitigated by incorporating mitigation measures. The biological mitigation

measures required by the Mitigated Negative Declaration (MND) include avoidance of clearing and grubbing activities during bird breeding season, flagging or fencing of the southwestern spiny rush and woolly seablite onsite during construction, staking and flagging the limits of the 100-foot wetland buffer to ensure the project does not encroach within it, erosion control best management practices, and monitoring by a qualified project biologist throughout construction. The cultural and tribal mitigation measures require the presence of both an archeologist and a Luiseño Native American to monitor all ground disturbing activities. If any cultural resources are uncovered, all earth moving activity within and around the immediate discovery area shall be diverted or halted until the nature and significance of the find can be assessed and appropriate mitigation measures implemented. Finally, the MND requires the presence of a paleontologist during all earthwork operations that extend 4 feet below existing grade in case fossils are discovered.

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

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APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Agua Hedionda Land Use Plan
- Cultural and Paleontological Resources Survey Report, prepared by Dudek, dated January 2014
- Mitigated Negative Declaration (SCH No. 2017051043), certified by City of Carlsbad July 7, 2017

APPENDIX B – CULTURAL RESOURCES SIGNIFICANCE TESTING PLAN
PROCEDURES

A. An applicant seeking to recommence construction following discovery of cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 10 working days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed.

1. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.

2. If the Executive Director approves the Significance Testing Plan but determines that the testing measures therein are not de minimis, significance testing may not recommence until after an amendment to this permit is approved by the Commission.

3. Once the measures identified in the Significance Testing Plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by the project archeologist's recommendation as to whether the deposits are significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection B of this condition and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program.

B. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a Supplementary Archeological Plan for the review and approval of the Executive Director. The Supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others

identified in subsection C below. The Supplementary Archeological Plan shall identify proposed investigation and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archeological Plan.

1. If the Executive Director approves the Supplementary Archeological Plan and determines that the Supplementary Archeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.
2. If the Executive Director approves the Supplementary Archeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

C. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, except the Significance Testing Plan, shall have received review and written comment by a peer review committee made up of qualified archeologists convened in accordance with current professional practice. Representatives of Native American groups with documented ancestral ties to the area shall also be given an opportunity to review and submit written comments on the required plans. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee and Native American representatives or explain why the recommendations were rejected. Furthermore, upon completion of the review process, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for that entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.