

**CALIFORNIA COASTAL COMMISSION**

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# Th23a

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Staff Report: 3/28/19  
Hearing Date: 4/11/19

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 6-18-1184

**Applicant:** Theodore D. Viola

**Agent:** Robert O. Sukup

**Location:** Southeast corner of Hoover Street and Adams Street, Carlsbad, San Diego County (APN: 206-172-02)

**Project Description:** Subdivision of an approximately 31,775 square foot lot into two parcels of 15,458 square feet and 16,317 square feet.

**Staff Recommendation:** Approval with Conditions

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## SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing a subdivision of a single lot into two parcels located along the north shore of Agua Hedionda Lagoon in Carlsbad. The subject site is located immediately adjacent to parcels containing coastal sage scrub and subject to preservation standards in the City's certified Habitat Management Plan (HMP). In addition, the site is located between the lagoon and Adams Street, a designated scenic roadway that offers expansive views of the lagoon. The site is also highly visible above the lagoon from Interstate 5. Although no physical development is proposed with this application, when reviewing a subdivision, it is important to ensure there is adequate room on each of the newly created lots to allow development that is consistent with the resource protection policies of the Coastal Act and the City's certified Land Use Plan (LUP).

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The applicant has provided plans for conceptual homes, including yards, that demonstrate there is sufficient development area on each new parcel to construct a single-family residence while complying with the 20 foot habitat buffer required by the LUP and avoiding fuel modification that impacts the adjacent native habitat.

Staff is recommending approval of the project with a number of special conditions in order to protect offsite sensitive habitat resources, water quality, and visual resources, to restrict the buffer area, and to inform future property owners of constraints on future development of the lots.

The City's certified Agua Hedionda Land Use Plan (LUP) and Habitat Management Plan (HMP) require a 20 foot habitat buffer between development and coastal sage scrub habitat, and prohibit grading within such buffers. **Special Condition No. 1** acknowledges that any future development on Parcel 1 or Parcel 2 shall require a coastal development permit and shall be sited and designed to avoid impacts to views and sensitive coastal resources. **Special Condition No. 2** requires the applicant record the permit conditions against both parcels to ensure that future property owners are aware of the sensitive habitat located on the adjacent parcels, and the potential limitations on future development of the site. **Special Condition No. 3** requires the applicant to record a conservation deed restriction against each parcel to allow only certain uses in the buffer.

Commission staff recommends **approval** of coastal development permit application 6-18-1184 as conditioned.

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## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-18-1184 subject to the conditions set forth in the staff recommendation.*

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

### Resolution:

*The Commission hereby approves coastal development permit 6-18-1184 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 or 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. **Future Development.**

- (a) BY ACCEPTANCE OF THIS PERMIT, the applicant acknowledges this permit allows a subdivision that splits an approximately 31,775 square foot lot into an approximately 15,458 square foot Parcel 1; and an approximately 16,317 square foot Parcel 2. All other development proposals, including those on either Parcel 1 or Parcel 2, shall require review and approval by the Coastal Commission, or its successor in interest, under a separate coastal development permit. In addition, all future development on both Parcel 1 and Parcel 2 will be subject to the following restrictions and requirements:
- (i) Development shall be sited and designed to avoid impacts to sensitive habitat consistent with the most recently certified Carlsbad Habitat Management Plan and the most recently certified Agua Hedionda Land Use Plan. No development, including, but not limited to, the erection of structures, clearing of vegetation beyond fuel modification standards, or grading, may be located within a 20 foot habitat buffer measured from coastal sage scrub habitat either on the parcels or offsite, except as otherwise permitted by Special Condition No. 3, the certified Habitat Management Plan, or the certified Land Use Plan. [Exhibit 2](#) to the staff report shows the area of Parcel 2 that is located within 30 feet of the sensitive coastal sage scrub habitat as of the date of this approval.
  - (ii) Development shall be sited and designed to preserve views from Adams Street. Agua Hedionda LUP policies require that no portion of a structure shall be permitted to exceed the elevation of a scenic roadway.
  - (iii) Exterior development shall be undertaken in accordance with an approved color board or other indication of the exterior materials and color scheme to be utilized. The color of the structures 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.

- (iv) To minimize the need for irrigation, all landscaping shall be drought-tolerant, native, fire resistant, non-invasive plant species that are obtained from local stock. 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 (formerly the California Exotic Pest 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.
- a. All existing non-native species onsite shall be removed.
  - b. Plant 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(s) and arranged to maximize screening of the structure(s) from views from Agua Hedionda Lagoon and Interstate 5. A minimum of 5 trees shall be provided lagoonward of the building pad for the proposed residence(s). 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. A landscaping plan shall also indicate that all landscaping including the required trees shall consist of species that when mature, do not block public views from Adams Street. All landscaping shall be designed to mitigate the visual impact of the structure as viewed from the lagoon and Interstate 5, while preserving views from the home(s).
  - c. All landscaped areas on the project site(s) 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.
  - d. The use of rodenticides containing any anticoagulant compounds is prohibited.
  - e. 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 landscape plans, they shall use water conserving emitters (e.g. micro spray) and drip irrigation only. Use of reclaimed water (“gray water” systems) and rain water catchment systems is encouraged. Other water conservation measures shall be considered and implemented if feasible, including use of weather based irrigation controllers.

2. **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 two 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.

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

- (a) No development, as defined in Section 30106 of the Coastal Act, shall occur in the conservation area as depicted in [Exhibit 2](#), except fuel modification according to practices allowed in Zone B-3 by the City of Carlsbad's Landscape Manual.
- (b) PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space area. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area prepared by a licensed surveyor based on an on-site inspection of the open space area.
- (c) The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed.
- (d) The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the landowner in perpetuity.

**IV. FINDINGS AND DECLARATIONS**

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

The subject property is comprised of a vacant lot located southeast of the intersection of Adams Street and Hoover Street on the north shore of Agua Hedionda Lagoon in Carlsbad, San Diego County ([Exhibits 1, 2 and 3](#)). The site slopes gently from Adams Street south toward the lagoon, however, the parcel does not extend to the shoreline. 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 Interstate 5.

The applicant proposes to subdivide the approximately 31,775 square foot vacant lot into two vacant lots. Parcel 1, as proposed, would be approximately 15,458 square feet and is the westward half of the lot. Parcel 2, as proposed, would be approximately 16,317 square feet and is the eastward half of the lot. At this time, no construction is proposed.

In February 2018, the Commission approved a lot line adjustment between two vacant lots, including the subject parcel, as well as construction of a single-family residence on the northernmost lot (CDP #6-17-0613). At that time, the Commission determined that there was no sensitive habitat located on any portion of the two lots, including the subject site, however, parcels located immediately east and south of the subject lot contain coastal sage scrub habitat. These offsite parcels are identified in the City's certified Habitat Management Plan as "Standards Areas," which limits development to protect the maximum amount of coastal sage scrub habitat possible.

Because Agua Hedionda Lagoon is both 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 (Agua Hedionda Land Use Plan). The subject property is within the 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 LUP used as guidance.

## **B. BIOLOGICAL RESOURCES**

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 3-13-1.12 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:*

[...]

*c. 20 feet for all other native habitats (coastal sage scrub, southern maritime chaparral, maritime succulent scrub, southern mixed chaparral, native grassland, oak woodland).*

[...]

*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.*
- b. Recreational trails and public pathways within the first 15 feet of the buffer closest to the development, provided that construction of the trail or pathway and its proposed use is consistent with the preservation goals for the adjacent habitat, and that appropriate measures are taken for physical separation from sensitive areas.*

*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 3-13-1.12.

Section 5 A. of the City of Carlsbad Landscape Manual states in relevant part:

*In addition to the General Requirements listed below, the design, installation, and modification of existing vegetation shall be in conformance with one of the following "Conditions" for fuel modification zones or as required or modified by the Fire Code Official or his/her designee.*

Section 5 D. of the City of Carlsbad Landscape Manual states in relevant part:

*Zone B-1*

- Zone B-1 shall be measured horizontally 20 feet from the outlying edge of any habitable structure(s) toward the native vegetation or inward from the top of slope or edge of Native vegetation*

[...]

*Zone B-2*

- *Zone B-2 shall be measured horizontally 20 feet outward from the outlying edge of Zone B-1*

*[...]*

*Zone B-3*

- *Zone B-3 shall be measured horizontally 20 feet outward from the outlying edge of Zone B-2*
- *“High fuel” species, as listed in appendix C shall be removed*
- *Up to 50% of the volume of vegetation shall be thinned. Shrubs may be retained provided that they are pruned to a maximum height of four (4) feet*

*[...]*

- *Irrigation is not required.*

The primary concerns raised by the proposed project relate to potential adverse impacts to sensitive habitat. While no construction is proposed in this permit, when reviewing a subdivision, it is important to establish a development envelope for each of the newly created lots that ensures the lots can be developed in a manner that will avoid impacts to coastal resources. At the subject site, the City requires a 5-foot wide dedication along the entire frontage of Adams Street for future street widening and improvements. The City also requires a 20-foot wide minimum front yard setback, a side yard setback of 10 feet from the street, and a side yard setback that equals 10% of the interior of the lot’s width. The rear yard setback is required to be at least two times that of the side yard setback. The City’s HMP also requires a minimum 20-foot buffer from all native habitats, including coastal sage scrub.

With regard to brush management, the Carlsbad Landscape Manual requires a 60-foot brush management zone made up of three zones, each 20 feet in width, between native habitat and the nearest outlying edge of any habitable structure. However, the manual also allows for fuel modification zones to be modified by the Fire Code Official for a specific site, with sufficient information to determine that a buffer of lesser width will protect identified resources. Any such reduced buffer must be determined in consultation with CDFW, USFW, and the CCC. Policy 3-13-1.12 of the LUP allows Zone B-3 fuel modification to occur within the 20-foot wide habitat buffer area. Fuel modification practices allowed in Zone B-3 are thinning of trees and shrubs, removal of dead plants and tree branches, and general maintenance. Zone B-3 allows for selective pruning of 50% of the volume of native vegetation, 100% removal of high fuel species, and no irrigation.

The subject site has been historically cleared and contains no coastal sage scrub or other environmentally sensitive habitat onsite. However, according to the Biological Resources Technical Report prepared by Everett and Associates, dated November 8, 2016 and submitted by the applicant for the previously approved lot line adjustment (CDP #6-17-0613), as well as the first and second addendums to the Biological Resources Technical Report (dated October 14 and March 24, 2019, respectively), the properties located immediately east and south of the project site contain coastal sage scrub habitat. It should be noted that the previous staff report (CDP #6-17-0613) identified significant coastal sage scrub habitat immediately adjacent to the southern boundary of the subject site. Since this determination was made in 2016, Commission staff have met with the project's Certified Biological Consultant, and there have been two addendums to the report. The first addendum states that it was unclear to the project's Certified Biological Consultant where the southern property boundary was located, and that due to an anecdotal description the boundary was assumed to be approximately 30 feet farther south than it actually is. The second addendum clarifies that the project's Certified Biological Consultant has re-examined the distance from the southern property boundary of the subject site to native vegetation and has determined that the native vegetation is not located immediately adjacent to the subject property, but that the closest coastal sage scrub vegetation is approximately 29' south of the southern property line of Parcel 2, and within about 36' of the southeastern corner of Parcel 1 ([Exhibit 4](#)).

The parcels to the south of the subject site along Adams Street that contain coastal sage scrub are identified in the City's certified Habitat Management Plan (HMP) as "Standards Areas" – these parcels carry parcel-level development standards intended to allow some development while protecting the maximum amount of sensitive coastal habitat possible. As noted, in order to protect sensitive vegetation, both the City's Landscape Manual and the Agua Hedionda LUP policies require buffers between all preserved habitat areas and development. A minimum 20-foot buffer is required for native coastal sage scrub habitat, and only Zone B-3 brush management can occur within buffer.

The subject site is zoned for Residential (R-1) with a minimum lot size of 15,000 sq. ft. The proposed subdivision would result in a Parcel 1 that is approximately 15,458 sq. ft. and a Parcel 2 that is approximately 16,317 sq. ft., both satisfying the minimum lot size requirement. The applicant has provided plans for conceptual homes, including driveways and fenced yards that include development located as close as 20 feet from the southern property line. The City Fire Marshal has indicated to Commission staff that future development could include construction of a concrete masonry unit (CMU) wall around the lots in lieu of providing the full three zone, 60 foot fuel modification buffer required by the Landscape Manual.

The City of Carlsbad's 60-foot wide brush management zone is one of the smallest brush management zones required in San Diego County. Most recently, the Commission's identified standard distance proposed for fuel modification is typically 100' from any habitable structure. For example, the City of San Diego requires any property containing a habitable structure and native or naturalized vegetation to provide 100 feet of brush management in two distinct zones, with Zone 1 typically extending 35 feet out from the habitable structure towards the vegetation. Similarly, the City of Encinitas Fire

Department typically requires a fuel modification zone to extend 100 feet out from the vegetation-facing wall of a structure. Over the past decade, southern California has seen a rise in volatile and uncontrollable wildfires. As a result, the Commission has seen numerous requests for removal of sensitive vegetation, often on land directly adjacent to lagoon waters, in order to create what could be considered an adequate wildland/urban interface. In this case, the project has been approved with a 20 foot brush management zone. While 20 feet of brush management may be acceptable by the fire department now, future conditions and climate change may well result in increased brush clearance requirements.

However, in this case, the applicant has provided evidence that the adjacent sensitive vegetation is no closer than 29 feet from the proposed Parcel 2, and no closer than 36 feet from proposed Parcel 1. With these distances, in combination with a 20 foot native habitat buffer on the southernmost corner of proposed Parcel 1 and the entire southern portion of proposed Parcel 2, future development on both newly created parcels will be no closer than 49 feet from the native habitat. Thus, even if some additional brush management is required on this site in the future, the Commission can be reasonably assured that no significant impacts to sensitive habitat will result.

**Special Condition No. 1** acknowledges that any future grading or development on Parcel 1 or Parcel 2 shall require a separate coastal development permit, and identifies that future development must incorporate a 20 foot buffer zone from a portion of the southern property line as shown on [Exhibit 2](#), and must be located below the elevation of Adams Street, and include landscape screening. **Special Condition No. 2** requires the applicant to record the permit conditions against the properties to ensure that future property owners are aware of the sensitive habitat located on the adjacent parcels, and the potential limitations on future development of the site. **Special Condition No. 3** requires the applicant record an open space conservation deed restrictions against both parcels to provide the 20-foot wide habitat buffer. As conditioned, the Commission finds the project consistent with Section 30240 of the Coastal Act and the applicable policies of the Agua Hedionda LUP and City of Carlsbad HMP policies regarding protection of sensitive habitat areas.

## C. 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 proximity of this site to the lagoon poses a significant risk of erosion into the lagoon during possible future construction, potentially adversely impacting water quality. Thus, 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, future development will be required to comply with these restrictions. However, no grading or other construction is proposed at this time, and no impacts to water quality will occur.

#### **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 conformity with 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 roadway that runs along the north shore of the lagoon. The policies of the LUP require that development of lots that 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. In addition, 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 (ref. CDPs 6-98-14/Huber, 6-00-080/Gallagher, 6-04-59/Anastasi Development Company, and 6-04-161/Steward). Finally, because future structures may not be fully screened through the use of vegetation, the Commission typically requires that homes be colored in natural colors consistent with the surrounding hillside. **Special Condition 1** notifies the applicant that future development will be required to comply with these restrictions. 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. 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 was prepared by Dudek in 2014 (ref. CDP #6-17-0635) that identified cultural resource sites within a half mile of the project site. 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. No grading or construction is proposed in this permit, and thus, no impacts to cultural resources will result. However, to ensure that any prehistoric, archeological or paleontological cultural resources that may be present on the site and could be impacted by future development receive proper protections, preferably avoidance, future development will be required to submit an archeological monitoring plan. That plan will need to 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. Therefore, the Commission finds the project consistent with Section 30244 of the Coastal Act.

#### **F. LOCAL COASTAL PLANNING**

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made. The Agua Hedionda LUP has been certified by the Commission, but no implementing ordinances have been submitted by the City for the 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.

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

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Carlsbad found that this project is categorically exempt from the requirements of CEQA under Guideline 15315 (Tit. 14, Cal Code of Regs. [minor land divisions]).

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 habitat buffer areas and biological resources 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.

6-18-1184 (Viola)

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Certified Agua Hedionda Land Use Plan