

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO DISTRICT OFFICE  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
VOICE (619) 767-2370  
FAX (619) 767-2384

**F13b**

Filed: 4/30/21  
180<sup>th</sup> Day: 10/27/21  
Staff: C. Boyle-SD  
Staff Report: 8/25/21  
Hearing Date: 9/10/21

**STAFF REPORT: REGULAR CALENDAR**

**Application No.:** 6-20-0685

**Applicant:** Barry and Shanna Church

**Agent:** McCullough Design Development

**Location:** Adams St, Carlsbad, San Diego County (APN 206-200-04)

**Project Description:** Construction of an approximately 4,930 sq. ft., two-story single-family residence with attached garage and pool, dedication of a 25-foot wide easement landward of the mean high tide line for lateral public access along the lagoon, and approximately 1,252 cubic yards of grading on a 0.49 acre lot. Also proposed is the removal of unpermitted sand and resolution of unpermitted native vegetation removal.

**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. The applicant is also proposing to remove unpermitted sand and resolve unpermitted native vegetation removal through this application. There are two special status plant species located 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 a final trail plan establishing the alignment, size, or composition of a contiguous lagoon trail on the north shore of the lagoon has not yet been certified as part of the LCP, **Special Condition No. 5** clarifies that the applicant shall be responsible for trail improvements when detailed trail plans are incorporated into the LCP 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 the 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, and **Special Condition Nos. 9 and 10** require the applicant to implement construction-phase erosion control best management practices and post-development drainage improvements.

Cultural and paleontological survey reports prepared for the site identified cultural resources onsite, as well as the potential to unearth cultural and paleontological resources during grading activities. **Special Condition No. 11** requires submission of an archaeological monitoring plan requiring the presence of professional archaeologists

6-20-0685

Barry and Shanna Church

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.

Finally, to resolve violations on the site associated with the unpermitted placement of sand at the lagoon end of the property and unpermitted clearing of approximately 0.22 acres of coastal sage scrub habitat on the site, the applicant is proposing to remove the sand and to fund invasive species removal work by The Nature Collective within the lagoon watershed. **Special Condition No. 12** requires the applicant to make payment of an amount equal to the cost of a single invasive species treatment to The Nature Collective prior to issuance of the permit.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-20-0685, as conditioned. The motion is on page 5. The standard of review is Chapter 3 of the Coastal Act.

**TABLE OF CONTENTS**

**I. MOTION AND RESOLUTION ..... 5**

**II. STANDARD CONDITIONS ..... 5**

**III. SPECIAL CONDITIONS ..... 6**

**IV. FINDINGS AND DECLARATIONS..... 14**

    A. Project Description and Background ..... 14

    B. Biological Resources..... 16

    C. Public Access and Recreation ..... 20

    D. Visual Resources ..... 24

    E. Water Quality ..... 27

    F. Cultural Resources ..... 28

    G. Local Coastal Planning ..... 29

    H. Unpermitted Development ..... 29

    I. California Environmental Quality Act ..... 31

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS ..... 32

APPENDIX B – CULTURAL RESOURCES SIGNIFICANCE TESTING  
PROCEDURES..... 33

**EXHIBITS**

- [Exhibit 1 – Vicinity Map](#)
- [Exhibit 2 – Aerial View](#)
- [Exhibit 3 – Proposed Site Plan](#)
- [Exhibit 4 – 100 ft. Wetland Buffer Open Space Area](#)
- [Exhibit 5 – Views of Site](#)
- [Exhibit 6 – Lateral Public Access Easement Area](#)
- [Exhibit 7 – Approved Public Access Sign Design](#)
- [Exhibit 8 – Unpermitted Vegetation Clearing](#)
- [Exhibit 9 – Unpermitted Artificial Beach](#)

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve Coastal Development Permit 6-20-0685 pursuant to the staff recommendation.

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

### Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project 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. 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

- 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 applicant 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 applicant to bind

all future owners and possessors of the subject property to the terms and conditions.

### **III. 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 McCullough Design Development dated August 23, 2018 and received March 31, 2021.
- 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 and Fuel Modification Plans.**

- a. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a full-size set of final landscape and fuel modification plans approved by the City of Carlsbad and the Fire Department that are in substantial conformance with the landscape plans prepared by Ocotillo Design Group received March 31, 2021, 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 landscaping shall be drought-tolerant, fire resistant, non-invasive (preferably native) 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. Within the 100-foot wide wetland buffer, *Arctostaphylos (Emerald Carpet)* and *Juncus acutus leopoldii* shall be replaced with native, drought tolerant coastal sage scrub community species.
- v. Within the development footprint, *Vinca major*, *Cycas revoluta*, *Ilex crenata*, and *Sanselveria trifasciata* shall be replaced with non-invasive plants that are non-toxic to wildlife. *Agave 'Blue Glow'*, *Agave attenuata*, *Cordyline 'Sprilecpink'*, *Echeveria 'lipstick'*, *Passiflora 'Ruby Glow'*, *Phormium tenax Green Flax*, *Phormium tenax 'Tiny Tiger'*, *Rhaphiolepis umbellata 'minor'*, and *Salvia leucantha 'Santa Barbara'* shall be replaced with non-cultivars. Trees along the frontage of Adams Street that would block views of the lagoon shall be eliminated.
- vi. 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.
- vii. The placement of a minimum of one non-invasive specimen size tree (24-inch box minimum) that has been pre-approved by the Coastal Commission staff ecologist 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 development. 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.
  - xiii. No fuel modification shall occur within 50 feet of the lagoon.
- 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.
  - 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. 9;
  - 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;
  - 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.
  - v. Reburial of any cultural resources discovered on the site consistent with the requirements of the Cultural Resources Treatment and Monitoring Plan required by Special Condition No. 11.
- b. PRIOR TO THE ISSUANCE OF A 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 easement 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 Commission has not already certified a final trails plan that proposes a trail for the property at that time, within 90 days of certification of an LCP amendment that incorporates 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, separate coastal development permit, unless the Executive Director determines a permit or amendment is not legally required.

## **6. Deed Restriction.**

PRIOR TO THE 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. Construction and Pollution Prevention Plan.**

- a. The permittee shall comply with the Tier 2 City Storm Water Pollution Prevention Plan, prepared by Sowards & Brown Engineering, dated October 8, 2020, regarding erosion control during construction.
- b. To minimize wildlife entanglement and plastic debris pollution, any temporary rolled erosion and sediment control products used (such as fiber rolls, erosion control blankets, and mulch control netting) shall either be netting-free or shall contain plastic-free biodegradable natural-fiber netting (such as jute, sisal, or coir fiber). Degradable plastic netting is not an acceptable alternative. When no longer required, temporary erosion and sediment control products shall be promptly removed.
- c. 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.

**10. Post-Development Runoff Plan.**

- a. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, the following information:
  - i. An explanation of the design of the proposed BMPs to verify that they are sized sufficiently to retain and treat the stormwater from the project site. The detention vault shall be sized to detain the 85th percentile 24-hour design storm for the area that flow to the detention vault, and the biofiltration basins shall be sized to treat the 85th percentile 1-hour storm

flow (multiplied by a safety factor of 2) for the area that flows to the filtration BMPs.

- iii. Design sizing calculations that include a description of the variables and how the values of each variable were determined for the calculation.
- iii. The total amount of paved area from which runoff will be treated by the bioswale, and the total amount of paved area from which runoff will be captured by the stormwater detention vault.
- b. The permittee shall comply with the Tier 2 City Storm Water Pollution Prevention Plan prepared by Sowards & Brown Engineering, dated October 8, 2020, regarding water quality and post-development runoff plans.
- c. 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.

#### **11. 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 archaeological/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.

- vi. The permittee shall provide sufficient archaeological 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.

## **12. Invasive Species Treatment.**

- a. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall pay to The Nature Collective an amount equal to the cost of a single invasive species treatment, not more than \$15,000.00, to be undertaken by The Nature Collective pursuant to a valid coastal development permit, exemption or otherwise allowable development under the California Coastal Act as determined by the Executive Director.

## **IV. FINDINGS AND DECLARATIONS**

### **A. Project Description and Background**

The subject property is a 21,202 sq. ft. 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 west of the site and several lots immediately to the east of the site are developed with single-family residences.

The applicant proposes to construct an approximately 4,930 sq. ft. 2-story single-family residence with attached garage and a pool. The City requires a 5-foot wide dedication along the entire frontage of Adams Street for future widening and street improvements. Approximately 1,252 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) ([Exhibit 4](#)). 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 ([Exhibit 6](#)). All development is proposed to be set back 100 feet from the MHTL, with the exception of 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 sq. ft., 2-story, 30 foot high single-family residence on the subject site (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 adjoining lots to the east and west. The approved single-family residence would have been located on the subject site. That application identified approximately 0.6 acres of coastal sage scrub located across all three lots, including approximately 0.22 acres on the subject site. All of the coastal sage scrub habitat was proposed to be cleared for construction of the residence on the subject lot and through fuel modification on the adjoining lots. The applicant at that time purchased 0.5 acres of mitigation credit for the proposed loss of coastal sage scrub. However, the permit was never issued and has since expired.

In reviewing this application, Commission staff discovered, based on historic satellite imagery, that the site has been cleared of vegetation without the benefit of a coastal development permit ([Exhibit 8](#)). Although the mitigation credit purchased by the prior owner was implemented at the Carlsbad Highlands Mitigation Bank, CDP No. 6-98-14 was never issued. Therefore, the subsequent clearing of vegetation that occurred is a violation of the Coastal Act.

In addition to the unpermitted vegetation clearing, sand was placed on the lagoon end of this property and the neighboring property to the east between 2008 and 2010 without a coastal development permit ([Exhibit 9](#)). Enforcement staff have an open case for the neighboring property that created the artificial beach.

Both of these violations impacted native vegetation that previously occurred on site. In order to resolve the violations and mitigate for these impacts, in addition to the 0.5 acre of coastal sage scrub mitigation that has already been implemented at the Carlsbad Highlands Mitigation Bank, the applicant has proposed to remove the remaining sand and re-use any sand deemed suitable by the on-site engineer for construction activities and dispose of any unsuitable sand at a landfill offsite. Through this application, some of the vegetation removal that has occurred will be approved after the fact, and in other areas where vegetation was removed, appropriate native species will be planted. The applicant has also agreed to fund a single treatment to remove invasive species within Agua Hedionda Lagoon by The Nature Collective, formerly the San Elijo Lagoon Conservancy.

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 3-13.1.3 of the Agua Hedionda Land Use Plan states:

Coastal Sage Scrub is a resource of particular importance to the ecosystems of the Coastal Zone, due in part to the presence of the Coastal California gnatcatcher (Federal Threatened) and other species. Properties containing Coastal Sage Scrub located in the Coastal Zone shall conserve a minimum 67% of the Coastal Sage Scrub and 75% of the gnatcatchers onsite. Conservation of gnatcatchers shall be determined in consultation with the wildlife agencies.

Policy 3-13.1.9 of the Agua Hedionda Land Use Plan states:

There shall be no net loss of Coastal Sage Scrub, Maritime Succulent Scrub, Southern Maritime Chaparral, Southern Mixed Chaparral, Native Grassland, and Oak Woodland within the Coastal Zone of Carlsbad. Mitigation for impacts to any of these habitat types, when permitted, shall include a creation component that achieves the no net loss standard. Substantial restoration of highly degraded



areas (where effective functions of the habitat type have been lost) may be substituted for creation subject to the consultation and concurrence of the U.S. Fish and Wildlife Service and the California Department of Fish and Game (wildlife agencies). The Coastal Commission shall be notified and provided an opportunity to comment upon proposed substitutions of substantial restoration for the required creation component. Development shall be consistent with Policy 7-1 of this subsection, unless proposed impacts are specifically identified in the HMP; these impacts shall be located to minimize impacts to Coastal Sage Scrub and maximize protection of the Coastal California gnatcatcher and its habitat.

Policy 3-13-1.10 of the Agua Hedionda Land Use Plan states:

Where impacts to the habitats stated in 3-13-1.9 are allowed, mitigation shall be provided as follows:

- a. The no net loss standard shall be satisfied as stated in 3-13-1.9. Typically this will consist of creation of the habitat type being impacted (or substantial restoration where allowed) at a ratio of at least 1:1 as provided in the HMP.

[...]

- c. Impacts to Coastal Sage Scrub shall be mitigated at an overall ratio of 2:1 with the creation component satisfying half of the total obligation. The remainder of the mitigation obligation shall be satisfied pursuant to the provisions of the HMP.

[...]

- f. Mitigation for impacts within the coastal zone should be provided within the coastal zone, if possible, particularly the 1:1 creation component, in order to have no net loss of habitat within the coastal zone. Mitigation measures on land outside the Coastal Zone may be acceptable if such mitigation would clearly result in higher levels of habitat protection and value and/or would provide significantly greater mitigation ratios, and the mitigation area is part of the HMP. Land area inside and outside the coastal zone which serves as mitigation for habitat impacts in the coastal zone shall be permanently retired from development potential and secured as part of the HMP preserve management plan as a condition of development approval

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.

The City of Carlsbad's certified Habitat Management Plan also includes the above-cited language of Policies 3.13-1.3, 1.9, 1.10, and 1.11.

The project site is a lagoon-fronting hillside lot that slopes towards the water's edge. Many of the vacant 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 Palmer's grapplinghook occurring within the development footprint and woolly seablite located at the southern portion of the site along the shoreline. Grasses and shrubs made up less than 50% cover and 10% cover, respectively. Palmer's grapplinghook is a "watch list" status species, and its abundance varies substantially in response to weather conditions and other factors. The applicant has proposed to transplant any remaining individuals prior to construction. Woolly seablite is considered a special status plant species due to limited distribution within California. It is located south of the project footprint and will not be impacted by the development.

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 60 feet of the buffer, which is inconsistent with Policy 3.13-1.11. Therefore, **Special Condition No. 2** clarifies that no fuel modification may occur within 50 feet of the lagoon and requires the applicant to submit revised fuel modification plans, approved by the City of Carlsbad Fire Department, consistent with this requirement.

The applicant is proposing to revegetate the buffer with native shrubs and grasses consistent with a coastal sage scrub community. The Commission's staff ecologist determined that the landscape plans submitted for the wetland buffer include one species that is a cultivar, which are generally discouraged because their potential to become invasive is unknown. 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. **Special Condition No. 3** also allows the reburial of any cultural resources that may be discovered on the site during construction within the buffer area as further described in Section IV.F Cultural Resources.

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 three invasive species and nine cultivar 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 reviewing this application, Commission staff discovered, based on historic satellite imagery, that the site has been cleared of vegetation without the benefit of a coastal development permit ([Exhibit 8](#)). The applicant is proposing after-the-fact approval for the removal of vegetation, including approximately 0.22 acres of coastal sage scrub (see Section IV.H. Unpermitted Development for detailed discussion of the violation resolution). In May 1998, the Commission approved construction of a 4,100 sq. ft., 2-

story, 30 foot high single-family residence on the subject site (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 adjoining lots to the east and west. The approved single-family residence would have been located on the subject site. That application identified approximately 0.6 acres of coastal sage scrub located across all three lots, including approximately 0.22 acres on the subject site, that was not occupied by California gnatcatcher. All of the coastal sage scrub habitat was proposed to be cleared for construction of the residence on the subject lot and through fuel modification on the adjoining lots. The applicant at that time purchased 0.5 acres of mitigation credit at the Carlsbad Highlands Mitigation Bank, which the US Fish and Wildlife Service and the California Department of Fish and Game accepted as sufficient mitigation for the proposed coastal sage scrub impacts. The Commission found the vegetation removal proposed in CDP 6-98-14 to be consistent with the Coastal Act and the LUP at that time. However, the permit was never issued and has since expired.

The currently certified LUP requires conservation of 67% of coastal sage scrub habitat on a site and mitigation of impacts to coastal sage scrub at a 2:1 ratio, with at least half of that requirement fulfilled through creation of new coastal sage scrub to ensure no net loss of this sensitive habitat within the coastal zone. All of the 0.22 acres of coastal sage scrub habitat that was previously documented on this site has been removed. The 0.5 acres of mitigation purchased in the 1990s exceeds the 2:1 ratio required for the 0.22 acres of coastal sage scrub that was removed from this site. While the Carlsbad Highlands Mitigation Bank is located outside of the coastal zone, the mitigation was purchased and implemented in the 1990s. Prior to certification of the City's Habitat Management Plan in July 2003, the Commission routinely accepted mitigation for impacts to coastal sage scrub at the Carlsbad Highlands Mitigation Bank. The impacts of the unpermitted removal of coastal sage scrub were mitigated consistent with the Chapter 3 and LUP policies that were in place at the time of the removal. In this limited circumstance, where mitigation for vegetation removal that was previously approved by the Commission was implemented in that same time period, after-the-fact approval is appropriate.

In summary, the project site contains two 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, 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 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 (e.g., CDPs 6-86-035-A2/Marsaglia-Murray and 6-17-0635/Thankful Texans).

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 ([Exhibit 6](#)). **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 7.8(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.

The property immediately west of this site was recently developed (CDP 6-17-0635/Thankful Texans) and has a public access easement that would align with the easement across the subject site. However, public access easements have not been secured on all lots between these properties and the existing vertical access available to the east at the terminus of Cove Drive and to the west at the terminus of Hoover Street. Therefore, trail improvements constructed on this property would not connect to any other trail segment or to Adams Street. 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. Properties further 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, 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.

While the City recently completed its Trails Master Plan that identifies a trail along this area of the lagoon, an LCP amendment is required to incorporate those trail standards into the LCP. In addition, specific triggers should be identified for trail construction. For example, trail improvements would be appropriate when there is direct or continuous access available to a vertical connection point. The Commission finds that postponing the actual trail construction until the City's trail standards are incorporated into the LCP 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:

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 1,252 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, 6-17-0613/Viola, and 6-17-0635/Thankful Texans). 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.

Policy 7-12 of the City's certified Habitat Management Plan also includes the above-cited language of Policy 3.14.

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. 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 and Habitat Management Plan Policy 7-12 prohibit 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. The applicant submitted a weather-triggered action plan, identifying specific BMPs to be installed a minimum of 48 hours prior to a predicted storm event. The Commission's water quality staff have reviewed the weather-triggered action plan and agree that these erosion control measures are sufficient to protect water quality from grading activities occurring during the rainy season. To prevent potential impacts to water quality, **Special Condition No. 2** requires the applicant to stabilize with plants all graded areas at the completion of grading. **Special Condition No. 9** requires the applicant to implement construction phase best management practices. Finally, **Special Condition No. 10** requires the applicant to submit detailed calculations to verify that these basins will be sufficient to infiltrate runoff from the site and 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 small portion of an archaeological site was previously recorded within the subject property. The site was surveyed in 1996 and produced artifacts but, due to the shallowness of the deposit, sparsity of artifacts, lack of variation in artifact types, and absence of features, was determined to be insignificant (Gallegos & Associates, 1996). The applicant submitted a 2018 update which included a survey that identified a light shell scatter with a few expedient tools. Due to the lack of integrity, lack of intact midden or features, and few surface and subsurface artifacts and shell, the report concludes the findings are not significant.

In adherence to the Commission's 2018 Tribal Consultation Policy, Commission staff sent emails and letters offering consultation to twenty Tribes identified by the Native American Heritage Commission as traditionally and culturally affiliated with the geographic area of the project. Staff received one letter from the Jamul Indian Village of California requesting project updates and recommending archaeological monitoring, and one letter from the Rincon Band of Luiseño Indians requesting consultation. During the consultation meeting, the tribal representative expressed concerns about the project's potential to impact traditional cultural properties. The representative indicated that they would review the additional documents provided by staff and provide a response letter. Any concerns raised subsequent to the publication of this report will be addressed through an addendum to this staff report.

A 2019 paleontological resources survey did not encounter paleontological resources on the project site and determined that impacts to resources are not anticipated. However, given the proximity of past fossil discoveries in the area and underlying sensitive deposits, there is potential for resources to be unearthed during ground-disturbing activities.

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. 11**, which requires the applicant to submit a cultural resources treatment and monitoring plan. The plan shall include provisions for both Professional Archaeologists 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. **Special Condition No. 3** allows for any cultural resources discovered during project construction to be reburied within the 100 foot wetland buffer consistent with the cultural resources treatment and monitoring plan. This will ensure that cultural resources will remain onsite, within an area that will be protected from future disturbance. 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. Unpermitted Development**

The applicant is requesting to resolve violations on the site that have impacted coastal sage scrub through this permit application. Although the biological survey for the current application identified no coastal sage scrub habitat on the site, a 1998 coastal development permit application (CDP No. 6-98-14/Huber) for a proposed single-family residence did identify coastal sage scrub on the property. At that time, the applicant for CDP No. 6-98-14 owned three adjacent lots, consisting of the subject site and the adjoining lots to the east and west. The approved single-family residence would have been located on the subject site. The records for CDP No. 6-98-14 indicate that 0.6 acres of coastal sage scrub occurred across the three lots, with approximately 0.22 acres of native vegetation occurring on the parcel now owned by the current applicant. All of the coastal sage scrub habitat was proposed to be cleared for construction of the

residence on the subject lot and through fuel modification on the adjoining lots. The applicant at that time purchased 0.5 acres of mitigation credit at the Carlsbad Highlands Mitigation Bank for the proposed loss of coastal sage scrub. However, the permit was never issued and has since expired.

The site has since been cleared of vegetation without the benefit of a coastal development permit ([Exhibit 8](#)). Because CDP No. 6-98-14 was never issued, the subsequent clearing of vegetation that occurred is a violation of the Coastal Act.

Additionally, sometime between 2008 and 2010, the property owner directly to the east of the subject site created an artificial beach by placing imported sand along the shoreline extending from the eastern end of their parcel and across the applicant's parcel ([Exhibit 9](#)). This work was done without the benefit of a coastal development permit and is therefore in violation of the Coastal Act. Creation of the artificial beach is not consistent with the policies of the City's LUP, which prohibits development, grading or alterations, including clearing of vegetation, within the 100 foot wetland buffer. The applicant is thus proposing to remove all of the imported sand from the 100 foot wetland buffer and re-use the sand for construction within the development footprint. An onsite soils engineer will determine if the sand is suitable for uses such as grading and backfill. If any of the material is deemed unsuitable, it will be removed from the property and disposed of. The area containing the artificial beach will be landscaped with native vegetation along with the rest of the 100 foot wetland buffer. The proposed work includes only the removal of the sand that is located on the parcel owned by the applicant. Commission enforcement staff will consider its options to address the ongoing violation on the adjacent property with the owner of that parcel.

Both of these violations impacted native vegetation on the site, either through the direct clearing of existing vegetation or through the prevention of vegetation from re-establishing due to the presence of imported sand. Through this application, some of the vegetation removal that has occurred will be approved after the fact, and in other areas where vegetation was removed, appropriate native species will be planted. The certified LUP requires that impacts to coastal sage scrub be mitigated at a 2:1 ratio, with at least half of that requirement fulfilled through creation of new coastal sage scrub to ensure no net loss of this sensitive habitat within the coastal zone. The 0.5 acres of mitigation purchased in the 1990s exceeds the 2:1 ratio required for the 0.22 acres of coastal sage scrub that was removed from this site. While the Carlsbad Highlands Mitigation Bank is located outside of the coastal zone, the mitigation was purchased and implemented in the 1990s. Prior to certification of the City's Habitat Management Plan in July 2003, the Commission routinely accepted mitigation for impacts to coastal sage scrub at the Carlsbad Highlands Mitigation Bank. The impacts of the unpermitted removal of coastal sage scrub were mitigated consistent with the Chapter 3 and LUP policies that were in place at the time of the removal. In this limited circumstance, where mitigation for vegetation removal that was previously approved by the Commission was implemented in that same time period, after-the-fact approval is appropriate.

Recognizing that the vegetation removal was unpermitted, the current applicant is proposing to fund invasive species treatment work done by The Nature Collective, formerly the San Elijo Lagoon Conservancy, within the Agua Hedionda Lagoon area in

order to resolve and mitigate for the impacts to coastal sage scrub at this site. The Nature Collective has conducted invasive species management and restoration within the Carlsbad Hydrologic Unit for 17 years, with work within Agua Hedionda Lagoon focused on the eastern end of the lagoon. The Nature Collective has indicated that invasive species management is one of the top priorities for habitat restoration within the lagoon. Therefore, **Special Condition No. 12** requires the applicant to submit a one-time payment to The Nature Collective equal to the cost of a single invasive species treatment. This payment to support invasive species removal is in addition to the existing mitigation purchased by a prior owner of the site that preserved coastal sage scrub habitat in the City of Carlsbad. Further, as required by the LUP, the applicant proposes to re-vegetate the 100-foot wetland buffer with coastal sage scrub community species, helping to restore more of the natural function of the lagoon ecosystem.

Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of applicant's liability for the violations described above. Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and the City's certified LUP. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit.

## **I. 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 the proposed project to be categorically exempt under Section 15303(a).

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 landscaping, screening of the development, cultural resources monitoring, 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.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

- Agua Hedionda Land Use Plan
- Archaeological Survey and Test for the Huber Property, Carlsbad, CA by Gallegos & Associates dated December 1996 and Letter Update dated May 21, 2018
- Paleontological Resources Review – Church Residence Project by Dudek dated August 19, 2019
- Coastal Commission Staff Report and Preliminary Recommendation, CDP Application No. 6-98-14 (Huber), dated April 21, 1998



## **APPENDIX B – CULTURAL RESOURCES SIGNIFICANCE TESTING 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 archaeologist's recommendation as to whether the deposits are significant. The project archaeologist'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 Archaeological 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 Archaeological Plan for the review and approval of the Executive Director. The Supplementary Archaeological 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 Archaeological 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 Archaeological Plan.

1. If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological 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 Archaeological 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 archaeologists 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.