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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-21-0843

Applicant: Cabrillo Power I LLC

Agent: Stan Weiler

Location: 4600 Carlsbad Blvd, Carlsbad, San Diego County.
(APNs 210-010-47 and 210-010-48)

Project Description: Subdivision of a 95.12 acre property into four parcels of 5.7 acres, 57.35 acres, 28.91 acres, and 3.16 acres.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The subject property is a 95-acre site located on the southern shore of Agua Hedionda Lagoon, east of Carlsbad Blvd and west of Interstate 5 ([Exhibit 1](#)). The site is bisected by a railroad in the north-south direction and is developed with several uses ([Exhibit 2](#)). The applicant proposes to subdivide the site into four separate lots to reflect the underlying leases and uses ([Exhibit 3](#)). Proposed Parcel 1 (5.7 acres) corresponds with the area leased by Poseidon for the desalination facility. Proposed Parcel 2 (57.35 acres) contains the remaining area located west of the railroad, including the decommissioned Encina Power Station, San Diego Gas & Electric switching yard, and aquaculture facility. Proposed Parcel 3 (28.91 acres) corresponds with the boundaries of the lease agreement for the Carlsbad Energy Center power station east of the railroad. Parcel 4 (3.16 acres) contains a sewer pump station east of the railroad as well as the slope along the lagoon shoreline.

The goal in analyzing a subdivision under the Coastal Act is to identify and protect all coastal resources on the site and establish a development envelope for each of the newly created lots. This will ensure that the lots can be developed in a manner that will avoid direct and indirect impacts to sensitive resources, minimize landform alteration, and promote public access to the shoreline.

While the proposed project does not include any physical development, the site is adjacent to the wetlands of Agua Hedionda Lagoon and contains steep slopes and environmentally sensitive coastal sage scrub habitat. The City's LUP and habitat management plan (HMP) require a minimum 100 ft. buffer from all wetlands and a 20 ft. buffer from all native habitats, including coastal sage scrub. For wetland habitats with a steep slope greater than 25%, the LUP dictates that the 100 ft. wetland buffer shall be measured from the top of the slope rather than the edge of the habitat.

Commission staff have attempted to coordinate with the applicants to ensure the various resources on the site are identified and mapped. However, the applicants have been unwilling to submit a biological resources survey or MHTL survey for the subject site, asserting that such requirements would be more suitable at a later stage when construction is proposed in a future coastal development permit application. The Commission has routinely required site surveys and imposed applicable development restrictions required by the Coastal Act or certified LCP at the subdivision stage. Subdivision pursuant to the Subdivision Map Act and any other division of land is specifically called out in Coastal Act Section 30106 definition of development as requiring a coastal development permit, and thus the subdivision must be analyzed for consistency with the Coastal Act and conditioned for foreseeable impacts to coastal resources.

Therefore, Commission staff have researched the site history, visited the site, and used the best available information to identify the approximate location of the existing wetlands, steep slopes, and native vegetation on the site that must be protected. [Exhibit 4](#) depicts the approximate location of the required wetland and native habitat buffers using the best available information. To ensure that the wetland and native habitat buffers are accurately delineated, **Special Condition #2** requires the applicant to submit an updated steep slopes survey, a MHTL survey, and a biological resources survey. **Special Condition #3** requires the placement of an open space conservation deed restriction on the area containing wetlands and native habitat and their required buffers. Should the required final site-specific surveys provide information that would result in significant changes to the extent and location of the required open space deed restricted area, such as a difference of more than 25 feet from the estimated boundary, or should the final surveys show a reduction in the required buffer area, **Special Condition #3** also requires the applicant to submit a CDP amendment to modify the open space deed restricted areas. Only with the identification and protection of resources can the Commission be assured that the future development that is facilitated

by the proposed subdivision will be able to be implemented consistent with Coastal Act and LCP requirements.

There is a substantial amount of existing development within 125 ft. of the shoreline. Thus, **Special Condition #3** allows for specific types of development to take place within the wetland and upland habitat buffers and acknowledges the applicant's right to repair and maintain these existing facilities within the required buffers.

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. However, public access to the subject site has historically been restricted. Future redevelopment of the site will provide an opportunity to establish public access along the shoreline. Further, a lateral public access trail along the shoreline on this site is identified in the City's proposed LUP, which would replace the Agua Hedionda LUP and is currently being reviewed by Commission staff. Therefore, **Special Condition #4** requires the applicant to record a lateral public access easement that extends 25 feet upland and ambulatory from the MHTL, as surveyed pursuant to **Special Condition #2**. **Special Condition #5** holds the applicant responsible for future implementation of an improved access path within the public access easement.

To notify future property owners of the conditions of this permit, **Special Condition #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. To ensure that any future development complies with LCP and Coastal Act requirements, **Special Condition #1** acknowledges that any future grading or development on the proposed parcels shall require a separate coastal development permit.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-21-0843, as conditioned. The motion is on page 5. The standard of review is Chapter 3 of the Coastal Act with the certified Agua Hedionda Lagoon Land Use Plan (LUP) and the City of Carlsbad Habitat Management Plan (HMP) used as guidance.

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EXHIBITS

[Exhibit 1 – Location Map](#)

[Exhibit 2 – Existing Uses](#)

[Exhibit 3 – Tentative Parcel Map](#)

[Exhibit 4 – Open Space Deed Restricted Areas](#)

[Exhibit 5 – CDP#6-12-003 Sewer Lift Station Revegetation Plan](#)

[Exhibit 6 – Encina Power Station Precise Development Plan constraints map](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-21-0843 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. Future Development.

- a. BY ACCEPTANCE OF THIS PERMIT, the applicant acknowledges this permit allows a subdivision that splits the 95.12 acre project site into a 5.7 acre Parcel 1, a 57.35 acre Parcel 2, a 28.91 acre Parcel 3, and a 3.16 acre Parcel 4. Any further subdivision or development proposals, including those on any of the proposed Parcels, shall require review and approval by the Coastal Commission, or its successor in interest, under a separate coastal development permit. In addition, all future development on the proposed parcels will be subject to the following restrictions and requirements:
- i. Development shall be sited and designed to avoid impacts to sensitive habitat consistent with the most recently certified Carlsbad Habitat Management Plan and the most recently certified Land Use Plan. No development, including, but not limited to, the erection of structures, clearing of vegetation beyond fuel modification standards, or grading, may be located within a 20 foot habitat buffer measured from coastal sage scrub habitat either on the proposed parcels or offsite, or within a 100 foot habitat buffer measured from the mean high tide line, except as otherwise permitted by Special Condition No. 3 of this coastal development permit.

2. Site Surveys.

- a. PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and written approval of the Executive Director, the following documents:
- i. Biological resources survey prepared by a qualified resource specialist, overlaid on the site plan, depicting the areas on and adjacent to the subject site, which contain non-native and native vegetation. The survey must include a description and map showing the area and distribution of vegetation types, and a map showing the distribution and abundance of all listed and sensitive plant and animal species.
- ii. Steep slopes survey prepared by a qualified professional, overlaid on the site plan, depicting the areas on the subject site which contain steep

slopes greater than 25% and denoting the location of the top of slope adjacent to Agua Hedionda Lagoon.

- iii. Mean high tide line survey prepared by a licensed professional land surveyor based on field data collected within the last 12 months. The survey shall be conducted in consultation with the California State Lands Commission (CSLC) staff. Prior to submitting this survey, it must be approved by the CSLC as compliant with the CLSC survey standards. The survey shall:
 - a. Use either the published Mean High Water elevation from a National Oceanic and Atmospheric Agency published tide station closest to the project or a linear interpolation between two adjacent tide stations, depending on the most appropriate approach in light of tidal regime characteristics.
 - b. Use the most current tidal epoch.
 - c. Use local, published control benchmarks to determine elevations at the survey site. Control benchmarks are the monuments on the ground that have been precisely located and referenced to the local tide stations and vertical datum used to calculate the Mean High Tide elevation.
 - d. Match elevation datum with tide datum.
 - e. Reference all elevations and contour lines to the North American Vertical Datum 1988 (NAVD88).
 - f. Note survey date, datum, and MHTL elevation

3. Open Space Conservation 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 top of the slope, or, in areas with no steep slopes, 100 feet upland of the mean high tide line, or in areas containing native vegetation and within a 20-foot wide buffer area adjacent to native vegetation, as generally depicted on Exhibit 4 of this coastal development permit, except for:
 - i. Repair, maintenance, and operation of existing facilities associated with the existing aquaculture, desalination, and sewer uses as approved by the Coastal Commission and pursuant to a coastal development permit when required.

- ii. Native landscaping and fuel modification consistent with the most recently certified Carlsbad Habitat Management Plan and the most recently certified Land Use Plan.
 - iii. Improvements associated with the public access easement required by Special Condition No. 4, including future access paths and associated signage, fencing, 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.
 - iv. Reburial of any cultural resources discovered on the site consistent with the requirements of any future cultural resources plans associated with future development.
- 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.
- e. Should the surveys required per Special Condition No. 2 of this coastal development permit indicate that site conditions are significantly different from conditions anticipated in this approval and would result in significant modifications to the open space deed restricted areas, including a smaller buffer area, the applicant shall be required to submit a CDP amendment to modify the location and extent of the open space deed restricted areas.

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, which is understood to be ambulatory from day to day and will be determined as required by Special Condition No. 2, and shall include terms and conditions consistent with this permit, including Special Condition No. 5 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 and 5 of this coastal development permit.

- 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 carry out future implementation and development of public access improvements, 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, and an associated signage program. The trail shall be suitable for use by pedestrians as specified by the public access easement required pursuant to Special Condition No. 3 of this coastal development permit. The permittee shall submit plans for construction of the trail across the property for review and written approval of the Executive Director as a component of any future proposed project on the proposed Parcels 2 and 4. Said path shall be constructed in accordance with the City of Carlsbad's final trails plan for the site, and shall be completed prior to or concurrent with occupancy of future development on the proposed Parcels 2 and 4. Signs informing the public of the existing public access easement fronting

the lagoon at the subject site shall be installed in easily visible locations. The easement holder shall be responsible for maintenance of the trail.

- b. Until submission of the trail plans to the Executive Director, no improvements within the area subject to the public access easement offer shall be permitted, unless otherwise authorized or required under the Coastal Act. Future public access trail improvements shall require an amendment to this permit or a separate coastal development permit unless the Executive Director determines a permit or amendment is not legally required.

6. **Deed Restriction.** PRIOR TO 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. **Final Map.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director a copy of a Final Map from the City of Carlsbad that substantially conforms to the subdivision as described in Special Condition 1. The permittee shall inform the Executive Director of any changes to the project required by, or related to, the Final Map. Such changes shall not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director issues a written determination that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The subject property is a 95-acre site located on the southern shore of Agua Hedionda Lagoon, east of Carlsbad Blvd and west of Interstate 5 ([Exhibit 1](#)). The site is bisected

by a railroad in the north-south direction. It is currently developed with several different uses, including the Carlsbad Energy Center power plant and City of Carlsbad sewer lift station located east of the railroad, and the Poseidon desalination facility, San Diego Gas & Electric switching yard, aquaculture farm, and decommissioned Encina Power Station (currently being demolished) west of the railroad ([Exhibit 2](#)).

The property currently consists of two parcels. The first is approximately 90 acres and covers most of the subject site (APN 210-010-47). The second existing parcel lies entirely within the other, is approximately 5.7 acres, and contains the existing Poseidon desalination facility (APN 210-010-48) ([Exhibit 1](#)). The applicant states that the boundaries of this parcel correspond to the boundaries of the lease between NRG & Poseidon for financial purposes and this is not a true lot parcel.

The applicant proposes to subdivide the site into four separate lots to reflect the underlying leases and uses ([Exhibit 3](#)). Proposed Parcel 1 would be 5.7 acres and correspond with the area leased by Poseidon for the desalination facility. This parcel would align with the existing parcel APN 210-010-48. Proposed Parcel 2 would be 57.35 acres and contain the remaining area located west of the railroad, including the decommissioned Encina Power Station, San Diego Gas & Electric switching yard, and aquaculture facility. Proposed Parcel 3 would be 28.91 acres and correspond with the boundaries of the lease agreement for the Carlsbad Energy Center power station east of the railroad. Parcel 4 would be 3.16 acres and contain a sewer pump station east of the railroad as well as the slope along the lagoon shoreline.

The site currently has land use designations of Utility (U) in the proposed Parcel 2 and Public (P) in the proposed Parcels 1, 3, and 4. Parcel 2 is proposed to be re-designated to Visitor Commercial/Open Space (VS/OS) under the City's proposed LCP Amendment LCP-6-CAR-21-0087-3, currently under review by Commission staff.

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. Subdivision and Future Development

Section 30106 of the Coastal Act states:

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or

of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

The proposed project does not include any physical construction; it subdivides the existing site into lots for the purpose of future development. While no construction is proposed, subdivision pursuant to the Subdivision Map Act and any other division of land is specifically called out in Coastal Act Section 30106 definition of development as requiring a coastal development permit, and thus the subdivision must be analyzed for consistency with the Coastal Act and conditioned for foreseeable impacts to coastal resources. Planning decisions, even without physical construction, can set in motion eventual coastal resource impacts. The earliest action point for many land alteration decisions occurs at the planning stage when a parcel is proposed for subdivision into smaller, presumably developable lots. Development expectations go hand-in-hand with lot creation, and sales of the subdivided lots create investment-backed expectations subject to takings analysis. Some areas or parcels of land have such high environmental value or such high risk of instability that no subdivision of a parcel in one of these areas should ever be considered. For example, a parcel that consists largely of environmentally sensitive habitat area (ESHA) or wetlands should not be subdivided because future development of those lots would invariably result in impacts to those habitats. For this reason, subdivision decisions must be made with as complete an understanding of all resources and development-related impacts as possible.

When reviewing a subdivision, the existing parcel, or in the case of the proposed subdivision, the existing two parcels, must be evaluated for the minimum allowable development potential until the applicant thoroughly demonstrates that the creation of additional lots will not have an unacceptable adverse environmental impact. A parcel proposed for subdivision must be able to support all elements of the subdivision while completely avoiding all hazardous and sensitive resource areas and minimizing land form alteration. Thus, no subdivision should be approved without complete information on impacts to coastal resources. This requires that the applicant identify, in detail, all the impacts which may occur if any further lot division is permitted and all possible steps which can be taken to minimize these impacts. For example, if there are any resources

on the parcel, these areas and adequate buffers should be placed in permanent open space when approving legal lots. In some cases, this may require the developer to delineate all future building areas, such as access roads, driveways and building pads for all created lots, to determine the feasibility of the total development. This will allow for establishment of a development envelope for each of the newly created lots to ensure that the lots can be developed in a manner that will avoid impacts to coastal resources.

In the case of the proposed project, the major concern associated with the subdivision is identifying the resources on the site to ensure that subsequent development on the newly created lots does not result in direct and indirect disturbance of sensitive or environmentally significant habitat areas, as well as ensuring that public access along the waterfront will be provided. The applicants have been unwilling to submit a biological resources survey or mean high tide line (MHTL) survey for the subject site due to their assertion that such requirements would be more suitable at a later stage when construction is proposed in a future coastal development permit application. Thus, as described in detail below, Commission staff identified the resources on the site based on the information available at this time, and the subject permit requires the applicants to provide site-specific information prior to issuance of the permit. The Commission has routinely required site surveys and imposed applicable development restrictions required by the Coastal Act or certified LCP at the subdivision stage¹. Only with the identification and protection of resources can the Commission be assured that the future development that is facilitated by the proposed subdivision will be able to be implemented consistent with Coastal Act and LCP requirements.

C. Biological Resources & Wetlands

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.

¹ See coastal development permits 6-18-1184, A-6-ENC-19-0032, A-2-HMB-15-0040, 4-13-0256, A-2-SMC-05-016, A-1-DNC-02-152, 6-00-98, 5-99-206, 6-99-78, 5-97-122, 6-96-43

Section 30233 of the Coastal Act states:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (6) Restoration purposes.
- (7) Nature study, aquaculture, or similar resource dependent activities.

[...]

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

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 3-13-1.12 of the City of Carlsbad Agua Hedionda Land Use Plan states in relevant part:

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

- a. 100 ft. for wetlands
[...]
- c. 20 feet for all other native habitats (coastal sage scrub, southern maritime chaparral, maritime succulent scrub, southern mixed chaparral, native grassland, oak woodland).

Buffer widths shall be measured from the edge of preserved habitat nearest the development to the closest point of development. For wetlands and riparian areas possessing an unvegetated bank or steep slope (greater than 25%), the buffer shall be measured from the top of the bank or steep slope rather than the edge of habitat, unless there is at least 50 feet between the riparian or wetland area and the toe of the slope. If the toe of the slope is less than 50 feet from the wetland or riparian area, the buffer shall be measured from the top of the slope.

Any proposed reductions in buffer widths for a specific site shall require sufficient information to determine that a buffer of lesser width will protect the identified resources. Such information shall include, but is not limited to, the size and type of the development and/or proposed mitigation (such as planting of vegetation or

the construction of fencing) that will also achieve the purposes of the buffer. The California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the Coastal Commission staff shall be consulted in such buffer determinations.

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

- a. Fuel Modification Zone 3 to a maximum of 20 feet for upland and non-riparian habitat. No fuel modification shall take place within 50 feet of riparian areas.
- b. Recreational trails and public pathways within the first 15 feet of the buffer closest to the development, provided that construction of the trail or pathway and its proposed use is consistent with the preservation goals for the adjacent habitat, and that appropriate measures are taken for physical separation from sensitive areas.

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

The City of Carlsbad's certified Habitat Management Plan also includes the above-cited language of Policies 3.13-1.3 and 1.12.

Policy 4.4 of the City of Carlsbad Agua Hedionda Land Use Plan states in relevant part:

Recognizing the unique environmental features of the lagoon and its environs and the sensitivity of the area to soil erodibility and sedimentation, development shall be regulated as follows:

- a. Development on existing subdivided lots having all of their area in slopes of 25% or greater shall be permitted, but grading shall be limited to minimal site preparation for pole-type footings.... Onsite vegetation shall not be disturbed beyond the minimal area needed to be cleared for the construction process, which shall be clearly delineated on approved site plans.
- b. Development, grading and landform alteration of natural steep slope areas (25%) shall be avoided, when feasible. Any unavoidable disturbance shall be minimized to the extent possible. Exceptions may include encroachments by roadway and utilities necessary to reach flatter developable areas, when there is no feasible less environmentally damaging alternative.

The primary concerns raised by the proposed project relate to potential adverse impacts to sensitive habitat and wetlands. The project site is immediately south of Agua Hedionda Lagoon. As described in the Agua Hedionda Lagoon LUP, Agua Hedionda comprises approximately 230 acres of water surface, with additional upland marsh and wetland areas. The lagoon extends 1.7 miles inland from the coast, and is approximately a half mile across at its widest point. The lagoon was originally an increasingly compressed salt marsh habitat until it was dredged and opened to tidal action in 1952 to 1954. The resulting deepening and tidal flushing created a new environment that now supports a wide range of marine and terrestrial habitats, as well as recreational uses. The lagoon supports approximately 55 species of water-related birds and extensive colonies of eel grass. Agua Hedionda Lagoon was identified as one of nineteen California coastal wetlands for acquisition by the State Department of Fish and Game, entitling it to additional protections under Section 30233(c) of the Coastal Act.

The southern bank of Agua Hedionda lagoon at the subject site consists of steep slopes, much of which are greater than 40%. The project site also includes a mix of both native and nonnative vegetation, including native coastal sage scrub. The City's LUP and habitat management plan (HMP) require a minimum 100 ft. buffer from all wetlands and a 20 ft. buffer from all native habitats, including coastal sage scrub. For wetland habitats with a steep slope greater than 25%, the LUP dictates that the 100 ft. wetland buffer shall be measured from the top of the slope rather than the edge of the habitat. 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.

As noted, the applicant has been unwilling to submit a biological resources survey or MHTL survey for the subject site. In the absence of current site-specific studies, Commission staff researched the site history, visited the site, and used the best available information to conclude that there are existing wetlands, steep slopes and native vegetation on the site that must be protected under the Coastal Act and LUP. According to a constraints map prepared for the Poseidon desalination plant, which is located on the subject site in the area proposed to become Parcel 1 ([Exhibit 6](#)), much of the lagoon shoreline along the northern portion of the subject site contains steep slopes greater than 40%. The City's LUP directs the required 100-foot wetland buffer be measured from the top of the steep slopes. Therefore, in most areas on the site, the wetland buffer must be measured beginning at the top of the slope rather than at the MHTL as is typically required at sites without steep slopes on the Agua Hedionda Lagoon shoreline.

Because the applicant has not provided a steep slopes survey or a MHTL survey, [Exhibit 4](#) depicts the approximate the location of the required wetland buffer using the best available information. To ensure that the wetland buffer is accurately delineated, **Special Condition #2** requires the applicant to submit a steep slopes survey of the property as well as a MHTL survey. **Special Condition #3** requires the placement of an open space conservation deed restriction on the area containing the required wetland buffer. In areas of the project site with steep slopes, this buffer extends 100 feet from the top of the slope. Should the required final surveys provide information that would result in significant changes to the extent and location of the required open space deed restricted area, such as a difference of more than 25 feet from the estimated boundary, or the final surveys show a reduction in the required buffer area, **Special Condition #3** requires the applicant to submit a CDP amendment to modify the open space deed restricted areas.

There is also native coastal sage scrub vegetation present on the site. Coastal development permit (CDP) 6-12-003 authorized the construction of the sewer lift station and a bridge on the proposed Parcel 4 and documented impacts to existing coastal sage scrub vegetation. At that time, about ten years ago, it was determined that the coastal sage scrub was not occupied by any endangered or threatened species, was considered isolated and patchy, and thus was not deemed to be environmentally sensitive habitat area (ESHA). Nevertheless, native habitat is still considered a valuable resource, and the City's LUP requires mitigation for impacts to coastal sage scrub in the Coastal Zone and the applicant was required to mitigate for the impacts on site. The previous CDP required 0.18 acres of on-site coastal sage scrub mitigation to be placed into an open space deed restriction ([Exhibit 5](#)). The site is still under construction and the City of Carlsbad staff has indicated that the mitigation is anticipated to start in 2023. To continue to provide protection for this native vegetation, **Special Condition #3** requires the placement of an open space conservation deed restriction on the area containing native coastal sage scrub and a 20 foot buffer, as depicted on [Exhibit 4](#).

Because the applicant has not provided a recent biological resource survey for the subject site, it is possible that additional native vegetation may exist beyond that identified in previous Commission action. The survey available for CDP 6-12-003 was limited to a small area on future Parcel 4. Therefore, **Special Condition #2** requires the applicant to submit a current biological resources survey that identifies the types and locations of native and non-native vegetation and all listed and sensitive plant and animal species. Should the survey identify additional native vegetation beyond the area currently anticipated and require an open space area that is significantly different from the one identified herein, such as a difference of more than 25 feet or less than the one identified herein, **Special Condition #3** requires the applicant to submit a CDP amendment to modify the open space deed restricted area.

Special Condition #3 allows for specific types of development to take place within the wetland and upland habitat buffers on proposed Parcels 2 and 4. There is a substantial

amount of existing development within 125 ft. of the shoreline associated with the existing aquaculture, desalination, and sewer lift station uses. Special Condition #3 acknowledges the applicant's right to repair and maintain these existing facilities within the required buffers. Native landscaping, fuel modification, and future public access improvements would also be allowed as specified by the LUP. The reburial of any cultural resources that may be discovered on the site during future construction would be permitted within the buffer to ensure that cultural resources remain onsite in a protected area.

It is possible that future redevelopment of this site could include new coastal-dependent, or otherwise high-priority uses that would require close proximity to the water's edge. Should future redevelopment of the site include uses within the wetland buffer that would be supportable by the Commission and the Coastal Act, the applicant may submit an amendment to this permit to consider allowing other uses within the open space deed restricted area. In order to ensure that future development complies with LCP and Coastal Act requirements, **Special Condition #1** acknowledges that any future grading or development on the proposed parcels shall require a separate coastal development permit. **Special Condition #7** requires the applicant to submit a final subdivision map.

Finally, **Special Condition #6** requires the applicant to record the permit conditions against the parcel to ensure that future property owners are aware of the sensitive habitat located on the adjacent parcels, and the potential limitations on future development of the site.

As conditioned, the Commission finds the project consistent with Section 30240 of the Coastal Act and the applicable policies of the Agua Hedionda LUP and City of Carlsbad HMP policies regarding protection of sensitive habitat areas.

D. 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 7.8 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 between the sea and first public roadway, where providing public access to the sea is a priority objective of the Coastal Act. Agua Hedionda Lagoon is the only lagoon in San Diego County where water related recreational uses are permitted. However, public access to the subject site has historically been restricted. The decommissioning of the Encina Power Station and future redevelopment of proposed Parcel 2 will provide an opportunity to establish public access along the shoreline. The certified Agua Hedionda Land Use Plan (LUP), which is used as guidance, does not identify this portion of the shoreline as a required public access trail. However, the City's proposed LUP, which would replace the Agua Hedionda LUP and is currently being reviewed by Commission staff (LCP-6-CAR-21-0087-3), identifies a future lateral pedestrian access trail along the shoreline of both Parcels 2 and 4 that connects with existing pedestrian access along Carlsbad Blvd.

In addition, Reach 3 of the Coastal Rail Trail is anticipated to follow the railroad right-of-way that bisects the subject site. The Coastal Rail Trail (CRT) is a countywide effort to provide and improve access along the rail corridor. An EIR document was commissioned by SANDAG in 1989 addressing the desire to construct a paved pathway within the rail right-of-way for approximately 32-miles within the County of San Diego. This document identified the alignment for the CRT in Carlsbad and included a crossing at Agua Hedionda Lagoon Bridge, immediately north of the subject site. The document cited the future construction of the City of Carlsbad's sewer lift station bridge as an ideal opportunity to provide the missing connection between the trail on the northern and southern sides of the lagoon. Therefore, the City of Carlsbad included potential pedestrian and bicycle access as part of its design for the new sewer bridge and the Commission required that the design of the CRT and this bridge be aligned (CDP#6-12-003). In regards to the subject site, it is anticipated that the CRT will be provided within the railroad right-of-way rather than on the subject parcel. However, it is important to identify and acknowledge this future trail during the subdivision process to ensure that future property owners are aware of it.

The LCP requires lateral public access easements to be at least 25 ft. wide landward of the mean high tide line, unless infeasible due to extreme topographic limitation, and pedestrian trails are required to be at least 10 ft. wide. During the local approval process for the subdivision map, the City of Carlsbad required the applicant to record an Irrevocable Offer of Dedication for a public trail easement corridor prior to recordation of the parcel map. However, the applicant's Offer of Dedication proposes only a 12 ft. wide easement, which is not consistent with LUP requirements. Therefore, **Special Condition #4** requires the applicant to record a lateral public access easement to extend 25 feet upland and ambulatory from the mean high tide line, as surveyed pursuant to **Special Condition #2**. **Special Condition #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 this site.

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 a parcel before the City finalizes its trail plans and the trail improvements on this site are required to be constructed, **Special Condition #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.

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. As a result, the proposed development can be found consistent with all applicable policies of the Coastal Act and the certified LUP.

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 proximity of this site to the lagoon poses a significant risk of erosion into the lagoon during possible future construction, potentially adversely impacting water quality. Thus, Agua Hedionda LUP Policy 3-14 prohibits grading during the rainy season between October 1 and April 1, but allows the October 1 grading season deadline to be extended if adequate erosion control measures are installed. To prevent potential impacts to water quality, future development will be required to comply with these restrictions as part of any required CDP for future development. However, no grading or other construction is proposed at this time, and therefore no impacts to water quality will occur as a result of the proposed subdivision.

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.

No grading or construction is proposed in this permit, and thus, no impacts to cultural resources will result. However, to ensure that any prehistoric, archeological or paleontological cultural resources that may be present on the site and could be impacted by future development receive proper protections, preferably avoidance, future development will be required to submit cultural resources investigations and comply with any required monitoring and significance testing procedures. Therefore, the Commission finds the project consistent with Section 30244 of the Coastal Act.

G. Local Coastal Planning

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

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

H. California Environmental Quality Act

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

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

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Agua Hedionda Land Use Plan
- CDP #6-12-003/City of Carlsbad Sewer Lift Station and Bridge