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STAFF REPORT: REGULAR CALENDAR

Application No.:	**6-22-0152**
Applicant:	**City of Carlsbad, Brandon Miles**
Agent:	Dudek, Carolyn Groves
Location:	Park Drive between Cove Drive and Bayshore Drive; 4650 Park Drive; and 4720 Park Drive, Agua Hedionda, Carlsbad, San Diego County (APNs 207-100-57, 207-100-67, 207-150-57)
Project Description:	Demolition of approximately 600 linear feet of existing retaining wall and construction of approximately 800 linear feet of new retaining wall; grading and revegetation of portions of the failing slope; and installation of new pedestrian improvements.
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The City of Carlsbad proposes to remove an existing approximately 600 linear feet (LF) retaining wall and construct a new approximately 800 LF wall composed of three different wall types varying in height from 2 to 12 feet. The existing retaining wall is degraded and requires replacement. Due to slope failure and sediment loss during rain events, the City must regularly close the sidewalk and Park Drive roadway to clean up sediment and debris (Exhibit 4). In its current erosive condition, the slope presents a public safety hazard and the regular closures of Park Drive impact public access to Agua Hedionda Lagoon. The City also proposes to repair and revegetate portions of the

failing slope, install pedestrian improvements along the north side of Park Drive, and install a new stormwater filtration facility (Exhibit 2).

The primary concerns raised by the proposed project are the impacts to upland habitat that the Commission's ecologist has determined to be environmentally sensitive habitat area (ESHA) and wetlands. The project site is an undeveloped hillside that contains a mixture of vegetation types, including coastal sage scrub that provides habitat for California gnatcatchers, which are listed as federally threatened, and a special-status plant species, California adolphia. Construction of the project will result in 0.30 acres (or about 13,000 sq. ft.) of direct, permanent impacts to coastal sage scrub through slope grading and other ground-disturbing activities. Coastal Act Section 30240 only allows resource-dependent uses and development in ESHA, and a retaining wall does not constitute such an allowable use. Therefore, the City reviewed a range of alternatives to determine if there are feasible alternatives that would avoid or minimize impacts to or development in ESHA. Ultimately, the proposed project was determined to result in the least impacts to ESHA. Further, the proposed project will ultimately have a positive impact on ESHA compared to the existing situation, the "no project" alternative, as it will prevent continued erosion and collapse of the slope that would ultimately destroy the existing vegetation and result in greater ESHA impacts. Nevertheless, the project, while beneficial, does not qualify as a resource-dependent purpose allowed in habitat, as required by Section 30240(a). Staff has conducted a conflict resolution analysis that concludes the benefits to public access and water quality balance the relatively minor impacts to coastal sage scrub.

To mitigate for the ESHA impacts, the City proposes 1.72 acres of off-site mitigation creation at the nearby The Crossings at Carlsbad golf course, which is approximately 1.75 miles from the project site and is within the Coastal Zone (Exhibit 1). This proposed mitigation is actually greater than the 2:1 ratio required by the LCP, and the Commission's ecologist has determined that the proposed mitigation is adequate. The City also proposes to revegetate the project site with coastal sage scrub plantings following construction; however, this is not intended to count towards their proposed mitigation. **Special Condition No. 1** requires the City to submit final construction plans that delineate the final footprint of work to be done. Due to the presence of special status birds in the project area, **Special Condition No. 3** requires the City to conduct nesting bird monitoring leading up to and during the project to ensure that nests are not impacted by project construction. **Special Condition No. 2** requires submittal of a final mitigation plan that describes how appropriate mitigation will be sited, established, and monitored to compensate for the unavoidable ESHA impacts.

In regards to wetlands, the project site contains 0.013 acres (550 sq. ft.) of disturbed seasonal wetlands. The new proposed retaining wall and drainage ditch would be constructed in the wetland area and will result in 0.008 acres (349 sq. ft.) of wetland impacts. Consistent with Section 30233(a), the proposed project is an allowable use in wetlands as it serves an incidental public service purpose. The City regularly closes the sidewalk and roadway to clean up debris due to slope failure and sediment loss. The purpose of the slope repairs, retaining walls, and drainage improvements is to resolve the erosion and slope failure issues at the project site. The proposed development will

not add vehicular lanes or a new route or otherwise increase vehicular capacity. The proposed project is also the least environmentally damaging alternative. Alternatives, including a no project alternative, a stepped slope and no wall, and a 20-foot wall and 3:1 slope, were considered. However, the proposed project will result in the least amount of impacts to wetlands because it eliminates erosion of the slope entirely and thus prevents future erosion and further wetland impacts. The City will mitigate for these wetland impacts by purchasing wetland mitigation bank credits from the North County Habitat Bank, which has already met its 5-year success criteria. The City is proposing to mitigate at just over a 2:1 ratio and will purchase 0.2 acres of credits. **Special Condition No.** 4 requires submittal of evidence that the mitigation bank credits have been purchased. In conclusion, the proposed project will result in a small amount of impacts to wetlands; however, the proposed project will result in the least amount of fill required to conduct an incidental public service project, and all impacts will be adequately mitigated.

As proposed, the project includes several public access benefits. The project will eliminate the erosion issues and resolve the need for future maintenance and road closures of Park Drive, which is the first public roadway. In addition, a new pedestrian crossing across Park Drive will be added and a new sidewalk will be constructed along the length of the new wall. While the construction of the new pedestrian crosswalk will result in the loss of four spaces, this loss of will not result in a significant adverse impact on public access and, on balance, public access will be improved.

The proposed project will also result in improved water quality. The slope stabilization and repairs will improve the current erosive conditions, and the brow ditch proposed at the top of the slope will eliminate stormwater runoff from the face of the slope and substantially decrease erosion. This will prevent the transport of sediment and other pollutants to nearby Agua Hedionda lagoon. The City also proposes to install drainage ditch and sediment trap Best Management Practices (BMPs), which will filter stormwater runoff generated at the project site before runoff discharges to the stormwater system and ultimately the lagoon. **Special Condition No. 7** requires submittal of an Operations and Maintenance Plan to disclose the amount of operational maintenance required for the proposed BMPs, including a description of how the applicant proposes operational maintenance and inspection for the proposed BMPs. **Special Condition No. 6** requires submittal of a final Construction Pollution Prevention plan to ensure construction activities do not result in adverse impacts on water quality.

Finally, cultural resources have been previously recorded within 0.25 miles of the project site; however, no previously recorded sites are within the project site and no new prehistoric or historic sites, artifacts, or features were identified during a recent field survey. 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, **Special Condition No. 5** 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.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-22-0152, as conditioned. The motion is on page 6. The standard of review is Chapter 3 of the Coastal Act.

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EXHIBITS

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-22-0152 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 construction plans approved by the City of Carlsbad that are in substantial conformance with the site and construction plans titled "Park Drive Street and Drainage Improvements" by Dudek dated August 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. Final Habitat Mitigation and Monitoring Plan.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a final mitigation and monitoring plan for the impacts to sensitive biological resources associated with the proposed development. Said plan shall be in substantial conformance with the plan titled "Conceptual Off-Site Mitigation Plan for Coastal Sage Scrub Habitat Impacts for the Park Drive Slope and Drainage Improvement Project at The Crossings at Carlsbad Golf Course" prepared by Dudek and dated July 2021 and as amended on October 7, 2022 and shall include the following:

a. Preparation of detailed site plans clearly delineating all impacted upland habitat areas and their exact acreage. Permanent impacts shall be included in this delineation.

b. All impacts to upland habitat shall be mitigated through restoration/enhancement at not less than a **2:1** mitigation ratio. A detailed site plan of the mitigation areas shall be included and shall include any proposed temporary irrigation, including its proposed duration and timing.

c. A Restoration and Monitoring Plan shall be prepared by a qualified restoration ecologist and shall at a minimum include the following:

i. A baseline assessment, including photographs, of the current physical and ecological condition of the proposed restoration site, including, a description and map showing the area and distribution of vegetation types, and a map showing the distribution and abundance of sensitive species. Existing vegetation and sensitive species shall be depicted on a map that includes the footprint of the proposed restoration.

ii. A description of the goals of the restoration plan, including, as appropriate, any changes to site topography, hydrology, vegetation types, presence or abundance of sensitive species, and wildlife usage. Any

anticipated measures for adaptive management in response to climatic changes shall be included.

iii. A description of planned site preparation and invasive plant removal.

iv. A restoration plan including the planting palette (seed mix and container plants), planting design, source of plant material, plant installation methods and timing, erosion control measures, duration and use of irrigation, and measures for remediation if success criteria (performance standards) and not met. The planting palette shall be made up exclusively of native plants that are appropriate to the habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used.

v. A plan for documenting and reporting the physical and biological "as built" condition of the restoration or mitigation site to be submitted to the Executive Director within 30 days of completion of the initial restoration activities. The report shall briefly describe the field implementation of the approved restoration or mitigation plan in narrative and with photographs, and describe any problems in the implementation, the resolution of problems, and any recommendations for future adaptive measures. The "as built" assessment and report shall be completed by a qualified biologist or restoration ecologist.

vi. A plan for interim monitoring and maintenance of all restoration and mitigation sites, and monitoring of any reference sites, including but not limited to**:**

A. A schedule of monitoring and maintenance activities.

B. Interim performance standards.

C. A description of field activities that includes sampling design, number of samples and sampling methods. The number of samples shall rely on a statistical power analysis to document that the planned sample size will provide adequate statistical power to detect the maximum allowable difference between the restored site and a reference site.

D. A monitoring period of at least 5 years and with a potential extension if performance standards are not met within that time.

E. Provision for submission of annual reports of monitoring results to the Executive Director for review and written approval for the duration of the required monitoring period, beginning the first year after submission of the "as-built" report. Each report shall be cumulative and shall summarize all previous results. Each report shall document the condition of the restoration with photographs taken from the same fixed points in the same directions. Each report shall

also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the interim performance standards and final success criteria.

F. Provisions for the submittal of a revised or supplemental restoration plan to be submitted if an annual monitoring report shows that the restoration effort is falling below the interim performance standards. Trigger events shall be included in the plan to define the level of nonperformance at which the submittal of a revised or supplemental restoration plan will be required. The applicant shall submit a revised or supplemental restoration program within 90 days of a trigger event to address those portions of the original plan which did not meet the approved success criteria.

Following the restoration, reports shall be submitted every ten years to the Executive Director for review and written approval to ensure that the restoration is maintained over the time period of the development.

vii. Final Success Criteria for each habitat type, including, as appropriate:

A. total species richness,

B. total ground cover of vegetation and of native vegetation,

C. vegetative cover of dominant species and definition of dominants, and

D. presence and abundance of any sensitive species observed during monitoring activities.

viii. The method by which “success” will be judged, including but not limited to:

A. Type of comparison.

B. Identification and description, including photographs, of any reference sites that will be used.

C. Test of similarity with a reference site. This could simply be determining whether the result of a census was above a predetermined threshold. Generally, the determination will entail a one- or two-sample t-test that demonstrates if differences between the restoration site and the reference site are within the maximum allowable difference for each success criterion (performance standard).

D. The field sampling design to be employed, including a description of the randomized placement of sampling units and the planned sample size.

E. Detailed field methods.

F. Specification of the maximum allowable difference between the restoration value and the reference value for each success criterion

G. Where a statistical test will be employed, a statistical power analysis to document that the planned sample size will provide adequate statistical power to detect the maximum allowable difference. Generally, sampling should be conducted with sufficient replication to provide 90% power with alpha=0.10 to detect the maximum allowable difference. This analysis shall require an estimate of the sample variance based on the literature or a preliminary sample of a reference site. Power analysis software is available commercially and on the Internet (e.g., http://www.stat.uiowa.edu/~rlenth/Power/index.html).

ix. Provision for submission of a final restoration report to the Executive Director for review and written approval at the end of the final monitoring period. The final report shall be submitted only after at least three annual reports document that no mediation or restoration activities were required to maintain the site, other than weeding. The report shall be prepared by a qualified restoration ecologist. The report shall evaluate whether the restoration site conforms to the goals and success criteria set forth in the approved final restoration program. Following Executive Director approval of the final restoration report, reports shall be submitted every ten years to ensure that the restoration is maintained over the time period of the development.

If the final report indicates that the restoration project has been unsuccessful, in part or in whole, based on the approved success criteria, the applicant shall submit within 90 days a revised or supplemental restoration plan to compensate for those portions of the original plan which did not meet the approved success criteria. The permittee shall undertake mitigation and monitoring in accordance with the approved final, revised upland restoration or mitigation plan following all procedures and reporting requirements as outlined for the initial plan until all performance standards (success criteria) are met. The revised restoration plan shall be processed as an amendment to this coastal development permit unless the Executive Director provides a written determination that no permit amendment is legally required.

The permittee shall undertake mitigation and monitoring in accordance with the approved final, revised upland mitigation plan. Any proposed changes to the approved final, revised plans 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 provides a written determination that no amendment is legally required.

3. Nesting Bird Monitoring and Avoidance Plan.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a Nesting Bird Monitoring and Avoidance Plan that shall include but not be limited to the following provisions:

If project activities must occur during bird nesting season (February 1 through August 31), a qualified biologist, with experience conducting bird surveys, shall survey for active nests within 7 days prior to commencement of project activities, and once a week thereafter during construction, to detect any such activity within 500 feet of the project area. If an active songbird nest is located within 300 feet of construction activities (500 feet for raptors), the qualified biologist shall halt construction activities to enable the applicant to employ best management practices (BMPs) to ensure that construction activities do not disturb or disrupt nesting activities. Noise levels at active nest sites shall not exceed 65 dB unless a noise study has determined that ambient noise in the immediate area exceeds that level. If this is the case, noise levels at the nest site shall not exceed the ambient noise level measured. Noise reducing BMPs may include using alternative equipment, equipment noise buffering, sound blankets, etc. Alternatively, construction activities and schedules may be adjusted to avoid active nest areas until the respective young birds have fledged. Unrestricted construction activities may resume when no active nests remain in the construction area. Results of nesting bird surveys, ambient noise surveys, and any follow-up construction avoidance measures shall be documented in monthly reports by the qualified biologist and submitted to the Coastal Commission Executive Director throughout the bird breeding season.

4. Off-site Wetland Impact Compensation.

WITHIN 90 DAYS OF ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide off-site compensation for the filling of 0.008 acres of seasonal wetland by debiting two times the area of impacted wetlands (2:1 mitigation ratio) with wetland credits from the North County Habitat wetland mitigation bank. Within said timeframe the applicant shall provide proof of purchase of such wetland mitigation bank credits to the Executive Director.

5. Cultural Resources Treatment and Monitoring Plan.

a. PRIOR TO THE 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 resources or Native American cultural resources that are present on the site and that may 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.

6. **Construction Pollution Prevention Plan.**

PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written approval of the Executive Director, a Construction Pollution

Prevention Plan (CPPP) that demonstrates that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:

a. General Construction-Phase Best Management Practices

i. Best Management Practices (BMPs) designed to minimize adverse impacts resulting from construction and demolition activities shall be implemented prior to the onset of such activity, including BMPs to minimize erosion and sedimentation, minimize the discharge of pollutants and non-stormwater runoff, and minimize land disturbance and soil compaction, as applicable. The plan shall specify the description and location of all BMPs to be implemented during construction and demolition.

ii. Appropriate protocols shall be implemented to manage all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and staff training), to protect coastal water quality.

iii. All BMPs shall be maintained in a functional condition throughout the duration of the construction and demolition activities, and shall be promptly removed when no longer required.

iv. The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized, to achieve water quality benefits such as transpiration, interception of rainfall, pollutant uptake, shading of waterways, and erosion control.

v. Soil compaction due to construction activities shall be minimized, to retain the natural stormwater infiltration capacity of the soil.

b. Minimize Erosion and Sediment Discharge. During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate BMPs, including:

i. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.

ii. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.

iii. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sediment from construction-related activities from entering coastal waters or the storm drain system.

iv. Tracking control BMPs (such as a stabilized construction entrance/exit, or street sweeping) shall be installed or implemented as needed to prevent vehicles leaving the construction area from tracking sediment off-site.

v. To minimize wildlife entanglement and plastic debris pollution, the use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, and mulch control netting) that contain plastic netting, including photodegradable plastic netting, shall be prohibited. Only products that contain loose-weave natural-fiber netting, or that do not contain netting, shall be allowed. Heavy-duty silt fences reinforced by plastic or metal netting shall also be prohibited. All temporary erosion and sediment control products shall be promptly removed when no longer required.

c. Minimize Discharge of Construction Pollutants. The discharge of other pollutants resulting from construction and demolition activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:

i. Stockpile and Debris Management

A. All stockpiles, demolition and construction materials, debris, and waste shall be covered during rain events, protected from stormwater runoff using temporary perimeter barriers, and located a minimum of 50 feet from coastal waters and storm drain inlets.

B. Demolition or construction waste and debris shall be removed from work areas as soon as feasible, to prevent the accumulation of debris, sediment, and other pollutants that may potentially be discharged into coastal waters or the storm drain system. Adequate disposal facilities shall be provided for solid waste produced during demolition or construction activities.

C. Trash receptacles shall be provided on-site and covered during rain events, and all trash shall be disposed of in the proper trash and recycling receptacles by the end of every construction day.

ii. Spill Prevention and Equipment Maintenance

A. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of construction products or materials that may have adverse environmental impacts. The

discharge of any construction products or materials into coastal waters, drainage courses, or the storm drain system shall be prohibited.

B. Leaks or spills of fuel, oil, grease, lubricants, hydraulic fluid, chemicals, preservatives, paints, or other construction products or materials shall be immediately contained on-site and disposed of in an environmentally-safe manner as soon as feasible.

C. Construction vehicles operating at the project site shall be inspected daily to ensure there are no leaking fluids, and shall be serviced immediately if a leak is found.

D. Fueling and maintenance of construction equipment and vehicles shall be conducted off-site, if feasible. Any fueling and maintenance of mobile equipment conducted on site shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets (unless these inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other pollutants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.

E. Equipment, machinery, and vehicles shall be washed only in designated areas specifically designed to contain runoff and prevent discharges into storm drain inlets. Thinners, oils, and solvents shall not be discharged into the sanitary sewer or storm drain systems.

iii. Control of Non-Stormwater Runoff

a. Runoff control BMPs (such as a concrete washout facility or a dewatering tank) shall be installed or implemented to retain, infiltrate, or treat non-stormwater runoff resulting from demolition and construction activities.

d. Construction Site Map and Narrative Description. The Construction Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:

i. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).

ii. A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil compaction, and minimize damage or removal of non-invasive vegetation.

Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities.

iii. A description of the BMPs that will be implemented to minimize erosion and sedimentation, minimize the discharge of other pollutants resulting from construction and demolition activities, and control non-stormwater runoff. Include calculations that demonstrate proper sizing of BMPs, as applicable.

iv. A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and staff training). Identify any temporary BMPs that will be converted to permanent post-development BMPs.

7. **Operations and Maintenance Plan.**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, an Operations and Maintenance Plan for the proposed permanent erosion and sediment control Best Management Practices (BMPs), including the brow ditch, drainage ditch, sediment trap, and inlet screen. The plan shall contain a description and schedule of the inspection and maintenance that will be conducted on these BMPs, and shall require the removal of accumulated sediment as frequently as necessary to prevent the discharge of sediment to the storm drain system and coastal waters.

8. **Disposal of Graded Material.** All excess spoils exported from the project site must be disposed of at a legal site outside of the coastal zone. Disposal of graded materials within the coastal zone will require a separate coastal development permit or an amendment to this permit.

9. Construction Easement Agreements.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, evidence of an encroachment permit or construction easement from the private property owners. The encroachment permit or construction easement shall evidence the ability of the applicant to within the private property as conditioned herein.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The City of Carlsbad proposes to remove an existing approximately 600 linear feet (LF) retaining wall and construct a new approximately 800 LF wall composed of three different wall types, repair and revegetate portions of the failing slope, and install pedestrian improvements along the north side of Park Drive (Exhibit 2). The project site

is a primarily undeveloped hillside with a south-facing slope ranging from steep to moderately steep. The site is surrounded by residential housing, with a public park situated at the top of the slope along the northeastern edge of the site. Agua Hedionda Lagoon is located approximately 50 feet southwest of the site (Exhibit 1). Due to slope failure and sediment loss during rain events, the City must regularly close the sidewalk and roadway adjacent to the subject hillside to clean up debris (Exhibit 4). In its current erosive condition, the slope presents a public safety hazard and the regular closures of Park Drive impact public access at Agua Hedionda Lagoon. The existing retaining wall is degraded and requires replacement.

The proposed new wall would be composed of three separate types of retaining walls based on site conditions (Exhibit 2). The first section (Zone A), at the southernmost end of the project boundary, is located within the Park Drive right-of-way and private property (APN 207-100-57). The slope is approximately 30 feet high and has an existing wall ranging from two to five feet high. The proposed replacement wall would be an approximately 330 LF stepped planter block wall with geogrid reinforcement and will be planted with native drought-tolerant species. The wall would have a maximum height of 12 feet and the slope behind the wall would be graded to a 2:1 slope. A brow ditch would be installed at the top of the slope and the top of the wall to convey stormwater runoff to the existing storm drain system. The second section (Zone B) is located within private property (APNs 207-10-57 and 207-150-57). The City is in the process of obtaining construction agreements from each of these private property owners. To ensure the City has authorization to access the site and conduct work, **Special Condition No. 9** requires submittal of final construction agreements prior to issuance of the CDP. In Zone B, approximately 180 LF of existing retaining wall would be replaced by an approximately 3-10 ft. tall soldier pile and lagging type retaining wall. The third section (Zone C) is also located within private property (APN 207-150-57) at the north end of the project site. An approximately 300 LF, two- to ten-foot-tall block wall would be installed along with a drainage ditch and sediment trapping system. Approximately 125 cubic yards of cut and 2,065 cubic yards of fill are proposed as part of this project.

A new pedestrian crossing consisting of two pedestrian ramps, pedestrian crossing flashing beacons, and signage would be constructed across Park Drive at Marina Drive. One light pole on the north side of Park Drive would be replaced with a new light pole, and approximately 5,500 sq. ft. of sidewalk would be replaced along the length of the proposed wall. Finally, a storm water filtration facility will be installed near the intersection of Park and Marina Drives.

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 & 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.

Section 30233 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.

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 3-13-1.2 of the Agua Hedionda Land Use Plan states:

Environmentally Sensitive Habitat Areas (ESHA)

Pursuant to Section 30240 of the California Coastal Act, environmentally sensitive habitat areas, as defined in Section 30107.5 of the Coastal Act, shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

Policy 3-13-1.3 of the Agua Hedionda Land Use Plan states:

Coastal Sage Scrub

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 3-13-1.7 of the Agua Hedionda Land Use Plan states:

Wetlands

Pursuant to California Public Resources Code Section 30121 and Title 14, California Code of Regulations Section 13577(b), “wetland‟ means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats and fens. Wetland shall include land where the water table is at, near or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. A preponderance of hydric soils or a preponderance of wetland indicator species shall be considered presumptive evidence of wetland conditions.

Wetlands shall be delineated following the definitions and boundary descriptions in Section 13577 of the California Code of Regulations.

Pursuant to California Public Resources Code Section 30233, no impacts to wetlands shall be allowed except as provided in that Section.

Policy 3-13-1.8 of the Agua Hedionda Land Use Plan states:

> Wetland Mitigation Requirements
>
> If impacts to wetlands are allowed consistent with Policy 3-13-1.7, mitigation shall be provided at a ratio of 3:1 for riparian impacts and 4:1 for saltwater or freshwater wetland or marsh impacts.

Policy 3-13-1.9 of the Agua Hedionda Land Use Plan states:

> No Net Loss of Habitat
>
> 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:

> Upland Habitat Mitigation Requirements
>
> 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 3.13-1.12 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 feet for wetlands
>
> b. 50 feet for riparian areas
>
> 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 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 (HMP) also includes the above-cited language of Policies 3.13-1.2, 1.3, 1.9, 1.10, and 1.12.

The primary concerns raised by the proposed project are the impacts the project will have on upland habitat that the Commission's ecologist has determined to be environmentally sensitive habitat area (ESHA) and wetlands.

Upland Habitat/ESHA

The project site is an undeveloped hillside that contains a mixture of vegetation types, including coastal sage scrub, disturbed coastal sage scrub, ornamentals, and developed vegetation covers (Exhibit 5). Coastal sage scrub (CSS) covers most of the project site along the top of the slope and north toward the nearby residential area. Biological surveys conducted by the applicant identified a pair of nesting California gnatcatchers, which are listed as federally threatened, are designated as a Bird Species of Special Concern by the State of California, and are also a covered species under the

Carlsbad HMP. Surveys also identified one special-status plant species, California adolphia, which has a California Rare Plant Rank 2B.1. Fourteen individuals were identified within the project area and nine would be impacted by the project.

Project Impacts

Construction of the project will result in 0.30 acres (or about 13,068 sq. ft.) of direct, permanent impacts to coastal sage scrub through slope grading and other ground-disturbing activities. While the City proposes to revegetate the site with coastal sage scrub following construction, this will occur more than 12 months after commencement of construction, and therefore all impacts to coastal sage scrub associated with the project are considered permanent.

Coastal Act Section 30240 only allows resource-dependent uses and development in ESHA, and a retaining wall does not constitute such an allowable use. Therefore, the City reviewed a range of alternatives to determine if there are feasible alternatives that would avoid or minimize impacts or development in ESHA.

Alternatives Analysis

In addition to the proposed project, the City considered three alternative project designs to stabilize and repair the eroding slope:

1) No improvements: The alternative to leave the current conditions as-is and do no improvements was not considered a viable option. The slope would continue to erode, impacting traffic flow and public access along the sidewalk, bike lane, and the roadway. Further, continued erosion of the slope, and eventual catastrophic failure of the retaining wall, would reduce the on-site habitat and could ultimately result in loss of habitat along the entire slope. It is estimated that the no project alternative would result in up to 0.65 acres of impacts to CSS.

2) Stepped slope and no wall: The stepped, cut-slope-only option includes removing the existing retaining wall and loose surface soils, reforming the slope at 2:1 (horizontal to vertical inclination), and excavating small benches in the slope to mitigate erosion. Revegetation of the graded slope face with erosion-resistant planting could be considered to further mitigate erosion and surficial slope stability. This design improves resistance to erosion, but does not eliminate it entirely. This alternative would result in 0.57 acres of impacts to CSS.

3) 20-foot retaining wall and 3:1 (horizontal: vertical) slope: The 20-foot-tall retaining wall and 3:1 slope was analyzed as a way to reduce habitat impacts compared to the proposed project. To achieve a smaller initial footprint, the slope grade was decreased and a taller wall would be constructed. To accommodate the reduction in slope angle, this alternative would include nearly double the amount of imported fill compared to the proposed project. This alternative would also include a brow ditch at the top of the new slope to minimize runoff across the proposed slope face. By removing the storm water

runoff from the face of the slope, erosion is expected to decrease, but less so than the proposed project because it does not address areas that are not currently eroded, but have a high susceptibility for erosion. Thus, some slope erosion would continue to occur and would result in continued loss of vegetation and habitat over time. This alternative would impact 0.25 acres of CSS impacts at time of construction and approximately 0.15 acres of additional CSS impacts would occur due to continued erosion that would be left unaddressed, resulting in up to 0.35 acres of CSS impacts.

4) 10-foot retaining wall and 2:1 slope (proposed project): Ultimately, this project alternative was selected because it results in the most stable design, fully reduces erosion of the slope, minimizes landform alteration, reduces visual impacts, and causes the least amount of habitat impacts. This alternative would result in 0.30 acres CSS impacts.

Thus, the proposed project was selected because it meets the project goals of reducing erosion of the slope and ultimately results in the least impacts to ESHA.

Because the project site contains ESHA vegetation and serves as habitat for special status wildlife, it is important that the proposed project's footprint is limited to the smallest extent feasible. Thus, **Special Condition No. 1** requires the City to submit final construction plans that delineate the final footprint of work to be done. Due to the presence of special status birds in the project area, **Special Condition No. 3** requires the City to conduct nesting bird monitoring leading up to and during the project to ensure that nests are not impacted by project construction.

Mitigation

The City's LCP requires mitigation for impacts to CSS at a 2:1 ratio, with at least half being creation. Thus, the City is required to provide 0.60 acres of mitigation. Consistent with this requirement, the City prepared a proposal for mitigation ("Conceptual Off-Site Mitigation Plan for Coastal Sage Scrub Habitat Impacts for the Park Drive Slope and Drainage Improvement Project at The Crossings at Carlsbad Golf Course" dated October 7, 2022). The City proposes to provide 1.72 acres of mitigation creation at The Crossings at Carlsbad Golf Course (The Crossings), which is approximately 1.75 miles from the project site and is within the Coastal Zone. The City will also transplant nine of the California adolphia plants that will be impacted by project construction to this mitigation site. The City also proposes to revegetate the project site with coastal sage scrub plantings following construction; however, this is not intended to count towards their proposed mitigation.

The proposed mitigation site was planted during construction of The Crossings in 2005. While construction of the golf course required a substantial amount of on-site mitigation, the subject area did not count towards that mitigation. Rather, the City distributed seeds and installed temporary irrigation for some areas beyond their required mitigation. Prior to these efforts, the site consisted of non-native grassland and thus this mitigation is considered creation. To further the habitat creation efforts at this site, the City proposes

to perform soil amendments, temporary irrigation, weed control, planting and seeding, and monitoring for five years. **Special Condition No. 2** requires submittal of a final mitigation plan that describes how the project site will be revegetated to a native state and how appropriate mitigation will be sited, established, and monitored to compensate for the unavoidable vegetation impacts.

Conclusion

For the reasons discussed above, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging feasible alternative and will mitigate impacts to habitat. Further, the proposed project will ultimately have a positive impact on ESHA compared to the existing situation, the "no project" alternative, as it will prevent continued erosion of the slope that would ultimately result in greater ESHA impacts. The proposed project, however, will occur in ESHA and is not a resource dependent use. As a result, the Commission finds that the project is inconsistent with Coastal Act Section 30240. However, as discussed below in Section H: Conflict Resolution, the Commission may approve the project via the "conflict resolution" provision contained in Section 30007.5.

Wetlands

The project site contains 0.013 acres (550 sq. ft.) of disturbed seasonal wetlands. This wetland area was documented in a 2018 report by the applicant's consultants that identified hydric soils and the prevalence of hydrophytic vegetation (cattails, Mexican fan palm, coastal goldenbush, annual rabbitsfoot grass). The Commission's ecologist has reviewed the report and agrees that the area meets the Coastal Act definition of a wetland. The project will result in 0.008 acres (349 sq. ft.) of wetland impacts.

Section 30108.2 of the Coastal Act defines "fill" as "earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area." Additionally, the Commission has long considered grading, excavating, and other ground-disturbing activities in coastal wetlands, riparian areas and estuaries to be a form of dredging or fill. A new proposed retaining wall and drainage ditch would be constructed in the wetland area and would result in 349 sq. ft. of fill, and this work can only be permitted if consistent with Section 30233.

Coastal Act Section 30233(a) requires a project that includes fill of wetlands to meet three tests. The first test requires that the proposed activity must fit into one of seven categories of uses enumerated in Coastal Act Section 30233(a). The second test requires that there be no feasible less environmentally damaging alternative. The third test mandates that feasible mitigation measures be provided to minimize the project's adverse environmental effects.

Allowable Uses

The first test set forth under Section 30233 of the Coastal Act is that any proposed filling, diking, or dredging must be for an allowable purpose as specified under Section

30233. The relevant category of use listed under Section 30233(a) in this case is incidental public service purpose.

The purpose of the slope repairs, retaining walls, and drainage improvements is to resolve the erosion and slope failures issues at the project site. The City regularly closes the sidewalk and roadway to clean up debris due to slope failure and sediment loss during rain events. In its current condition, the slope presents a public safety hazard and the regular closures of Park Drive impact public access at Agua Hedionda Lagoon. The project would mitigate surface and deeper-seated instability on the slope. The proposed development will not add vehicular lanes or a new route or otherwise increase vehicular capacity. The Commission has in many past actions[1] made a similar determination that dredging and filling for road safety improvement projects that do not increase vehicular capacity is an "incidental public service" pursuant to Coastal Act section 30233(a)(4).

Least Environmentally Damaging Alternative

For projects involving dredging and filling of wetlands, the Commission must ensure that the approved project has no feasible less environmentally damaging alternative, consistent with Section 30233 of the Coastal Act. Coastal Act Section 30108 defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors." Alternatives, including a no project alternative, a stepped slope and no wall, and a 20-foot wall and 3:1 slope, were considered and are described in detail in the previous section B. Biological Resources, Alternatives Analysis. Each of the build alternatives have the same impact of 0.008 acres. For the no project alternative, the wetland area would continue to be impacted by the larger slope issues related to erosion and deposition of sediment, such that the topography, hydrology, and vegetation of the existing wetland area may be degraded. Over time, it is likely that the entire 0.008 acres of wetlands would be slowly eliminated, meaning the no-build alternative would have an identical impact to all three build alternatives. Thus, the proposed project will result in the least amount of impacts to wetlands because it eliminates erosion of the slope entirely and thus prevents future erosion and further wetland impacts.

Therefore, the proposed project minimizes disturbance to wetlands, and is therefore the least environmentally damaging alternative available, consistent with that provision of Section 30233(a).

Mitigation

Lastly, Section 30233 requires that feasible mitigation measures be provided to minimize adverse environmental effects of dredging and filling wetlands. Depending on the manner in which the proposed project is completed, the proposed dredging and

[1] See, e.g., CDP Nos. 1-22-0446, 3-19-1119, 6-15-1975, 2-15-1354.

filling within coastal wetland habitat could have significant adverse environmental effects on the quality and functional capacity of this habitat and the wildlife within these areas.

The Mitigated Negative Declaration for the project requires measures that will be implemented to generally protect wetland habitat and wildlife within these habitats in the project area during construction activities, including:

- Clearly defined limits of project disturbance to avoid placement of equipment within adjacent vegetation
- Use of barrier fencing and designated staging areas to limit the construction footprint
- Water pollution and erosion control plan
- Use of project biologist to conduct pre-construction wildlife surveys, flush birds before clearing and grubbing, review grading plans, and halt work activity if necessary
- Seasonal work windows to avoid bird breeding season and rainy season
- Proper debris management

The proposed development is anticipated to result in permanent impacts to approximately 0.008 acres (349 sq. ft.) of wetlands. The City will mitigate for these impacts by purchasing wetland mitigation bank credits from the North County Habitat Bank, which is located within the coastal zone. The City is proposing to mitigate at just over a 2:1 ratio and will purchase 0.2 acres of credits. The North County Habitat Bank has already met its 5-year success criteria. The Commission's ecologist has reviewed the proposed mitigation and agrees that in this case it is adequate to mitigate at a wetland bank given that the area of impact is small, the wetlands are degraded, and the Bank has met its success criteria. **Special Condition No. 4** requires submittal of evidence that the mitigation bank credits have been purchased. Therefore, the project will provide adequate mitigation measures to minimize adverse environmental effects and will mitigate for all wetland impacts consistent with the requirements of Coastal Act Section 30233(c).

In conclusion, the proposed project will result in a small amount of impacts to wetlands; however, the proposed project will result in the least amount of fill required to conduct an incidental public service project, and all impacts will be adequately mitigated. Thus, the Commission finds that the project is consistent with Section 30233 of the Coastal Act, as conditioned.

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.

Section 30220 of the Coastal Act states:

> Coastal areas suited for water-oriented recreational facilities that cannot readily be provided at inland water areas shall be protected for such uses.

Policy 7.1 of the City of Carlsbad Agua Hedionda Land Use Plan states:

> Bicycle routes, and accessory facilities such as bike racks, benches, trash containers and drinking fountains shall be installed at the locations indicated on Exhibit I.

Policy 7.2 of the City of Carlsbad Agua Hedionda Land Use Plan states:

> Pedestrian access ways shall be located as shown on Exhibit J.

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 […]

Agua Hedionda Lagoon is the only lagoon in San Diego County where water-related recreational uses are permitted. Park Drive is the first public road in this area and provides the only connector road to Bayshore Drive, which terminates on the north shore of the lagoon and provides public access to fishing, recreation, and a public boat launch.

As proposed, the project includes several public access benefits. First, the purpose of the project is to resolve the existing erosion and drainage issues along this section of Park Drive that currently affect the function of the roadway and sidewalk during and after large rain events. The deposition of sediment from continued erosion along the sidewalk and roadway creates a safety hazard. The City must close the sidewalk and roadway multiple times a year to clean up large volumes of debris, thereby resulting in some temporary impacts on public access. The proposed project will eliminate the erosion issues and resolve the need for future maintenance and road closures. In addition, a new pedestrian crossing across Park Drive will be added at Marina Drive, which includes two pedestrian ramps, crosswalk markings and yield markings, pedestrian crossing flashing beacons, and crosswalk signage. Approximately 5,500 square feet of existing sidewalk will be demolished and a new sidewalk will be constructed along the length of the proposed wall. While the project area currently accommodates approximately 34 parking spaces along northbound Park Drive, construction of the new pedestrian crosswalk will result in the loss of four spaces. No changes to parking on the southbound side are proposed. To ensure the proposed project protects and provides public access amenities consistent with this proposal, **Special Condition No. 1** requires submittal of Final Plans. On balance, public access will be improved and the loss of four parking spaces will not result in a significant adverse impact on public access.

Construction will result in minor temporary impacts on access. The majority of the construction is anticipated to take approximately eight months and is planned to occur from May 1 to December 31. While typically the Commission encourages construction to occur outside of the summer season, the City proposes to conduct the proposed grading activities during the summer months to avoid rainy winter months during which erosion and sedimentation could result in adverse water quality impacts on the lagoon. To minimize temporary construction impacts, vehicle and bicycle traffic will be maintained at all times and vehicle access to Bayshore Drive and Marina Drive will be open at all times. Project construction is anticipated to result in the temporary closure of Park Drive's northbound driving, biking, and parking lanes adjacent to the project boundary for a maximum timeframe of May 1 through December 31. For up to five days within the same maximum time frame, a small portion of the southbound driving, biking, and parking lanes will be closed during working days and hours. Regardless of temporary northbound and southbound lanes closures, there will always be a lane of traffic for vehicles and bicycles available in either direction for the duration of the project. Parking along northbound Park Drive will be unavailable for the duration of construction (up to approximately 46 spaces) and up to 12 spaces along the southbound side may be unavailable at certain times during construction work hours.

Consistent with Coastal Act requirements, the project will continue to provide and even enhance public access and temporary impacts during construction have been minimized. Thus, as conditioned, the proposed project can be found consistent with the public access and recreation policies of the Coastal Act.

D. 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 and Policy 7-12 of the City's certified Habitat Management Plan state 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 4.1 of the City of Carlsbad Agua Hedionda Land Use Plan states in relevant part:

> a. All development must include mitigation measures for the control of urban runoff flow rates and velocities, urban pollutants, erosion and sedimentation in accordance with the requirements of the City's Grading Ordinance, Storm Water Ordinance, Standard Urban Storm Water Mitigation Plan (SUSMP), City of Carlsbad Drainage Master Plan, and the following additional requirements. The SUSMP, dated April 2003 and as amended, and the City of Carlsbad Drainage Master Plan are hereby incorporated into the LCP by reference. Development must also comply with the requirements of the Jurisdictional Urban Runoff Management Program (JURMP) and the San Diego County Hydrology Manual to the extent that these requirements are not inconsistent with any policies of the LCP.

[. . .]

c. Water pollution prevention methods shall be implemented to the maximum extent practicable, and supplemented by pollutant source controls and treatment. Small collection strategies located at, or as close as possible to, the source (i.e., the point where water initially meets the ground) to minimize the transport of urban runoff and pollutants offsite and into a municipal separate storm sewer system (MS4) shall be utilized.

d. Post-development runoff from a site shall not contain pollutant loads which cause or contribute to an exceedance of receiving water quality objectives or which have not been reduced to the maximum extent practicable.

e. Development projects should be designed to comply with the following site design principles:

1. Protect slopes and channels to decrease the potential for slopes and/or channels from eroding and impacting storm water runoff.

[. . .]

6. Where feasible implement site design/landscape features to slow runoff and maximize on-site infiltration of runoff.

The proposed project is located approximately 500 feet inland from Agua Hedionda Lagoon and thus raises concerns about potential adverse impacts on water quality. The project will not result in any new impervious surfaces. The proposed slope stabilization and repairs will improve the current erosive conditions, and the brow ditch proposed at the top of the slope will eliminate stormwater runoff from the face of the slope and substantially decrease erosion. This will prevent the transport of sediment and other pollutants to Agua Hedionda lagoon, which is located down gradient of the project. The City also proposes to install drainage ditch and sediment trap Best Management Practices (BMPs), which will filter stormwater runoff generated at the project site before runoff discharges to the stormwater system and ultimately the lagoon. The drainage ditch and sediment trap BMPs are proposed to reduce the deposition of sediment from the slope onto the sidewalk after storm events and to reduce the sediment that reaches the storm drain system. The drainage ditch and screen would collect the eroded slope material until City crews are able to remove it. **Special Condition No. 7** requires submittal of an Operations and Maintenance Plan to disclose the amount of operational maintenance required for the proposed BMPs, including a description of how the applicant proposes operational maintenance and inspection for the proposed BMPs.

It is possible that construction in this location could result in adverse water quality impacts on the lagoon. To prevent the mobilization and transport of sediment from the project site to the storm drain system, the applicant proposes to use temporary sediment and erosion control BMPs. **Special Condition No. 6** requires submittal of a final Construction Pollution Prevention plan to ensure construction activities do not result in adverse impacts on water quality. This special condition also prohibits the use

of plastic netting in all temporary erosion and sediment control BMPs to prevent plastic pollution and wildlife entanglement.

Overall, the proposed project will eliminate erosion of the slope and prevent sedimentation into the lagoon, resulting in improved water quality conditions, and is thus consistent with Coastal Act and the City's LCP as conditioned.

E. Visual Resources

Coastal Act Section 30251 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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Policy 8.1 of the City of Carlsbad Agua Hedionda Land Use Plan states:

> Park Avenue, Adams Avenue and Carlsbad Boulevard are designated as scenic roadways. [. . .]

The proposed project is located on the inland side of Park Drive, which is designated as a scenic roadway in the City's certified Agua Hedionda Land Use Plan. The proposed project will occur on the inland side of Park Drive and will not alter or block any existing views of the lagoon. The proposed 10-foot wall alternative was selected because it would result in a shorter wall and requires less landform alteration. With the proposed replanting of the slope, and planting of the geogrid wall with native species, visual impacts will be further minimized (Exhibit 3). Therefore, the Commission finds that the project is consistent with the visual resource protection policies of the Coastal Act and LUP.

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.

To determine whether the site could contain cultural or archaeological resources, the applicant's consultants performed a records search of the project area and reviewed all previous surveys, archaeological sites, subsurface investigations, and historic resources older than 45 years, for the area within a 0.25-mile radius of the site. In addition, a field survey was conducted. Four cultural resources have been previously recorded within 0.25 miles of the project site; however, no previously recorded sites are within the project site and no new prehistoric or historic sites, artifacts, or features were identified during the field survey. The nearest recorded cultural resource is located approximately 100 meters (328 feet) northeast of the Project site at the top of the slope. It contained human remains, pottery, shell, hearth features, and groundstone, and had been disturbed from agricultural work. This area was used for agricultural purposes from the late 1930s until the late 1980s, and a subdivision had been construction by the early 1990s and remains today. Based on the disturbed landform context, steep slope, and field survey observations, the applicant's consultants determined that there is a low potential for the presence of buried deposits.

In accordance with AB 52 (2014),[2] on November 12, 2020, the City's Planning Division notified several traditionally and culturally affiliated California Native American tribes that have requested notice of proposed projects. On December 17, 2020, the Tribal Historic Preservation Officer for the Rincon Band of Luiseño Indians responded to the notice, stating that the Rincon Band has concerns that the project has the potential to impact tangible tribal cultural resources, traditional cultural landscapes, and potential traditional cultural properties within the Rincon Band's Area of Historic Interest. The Rincon Band requested further information on the project, to review proposed mitigation, and consultation with the City on the project. The City held two phone consultation meetings with The Rincon Band to discuss the project and proposed mitigation measures. As a result of this consultation, the City agreed to implement several mitigation measures which were adopted through the project's MND, including having a qualified archaeologist or tribal monitor present for all ground-disturbing activities and establishing protocols should human remains be discovered during construction.

In adherence to the Commission's own 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. The Rincon Band of Luiseno Indians requested a consultation, and Commission staff met virtually with the Tribe's Tribal Historic Preservation Officer on June 30, 2022. The Tribe requested additional documents, which were provided by staff via email, but the Tribe did not respond to staff's requests for comments made on January 19 and 27, 2023. The San Pasqual Band of Mission Indians also requested a consultation but did not attend the scheduled virtual

[2] Amendments to Appendix G, Section XVII "Tribal Cultural Resources," CEQA Guidelines, Title 14 of the California Code of Regulations.

consultation, and Commission staff were unable to schedule a new meeting despite repeated attempts in July, November, and December 2022 and February 2023.

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. 5**, 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. With these requirements in place, the Commission finds the project consistent with Section 30244 of the Coastal Act.

G. Conflict Resolution

Section 30200(b) of the Coastal Act states:

> Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.

Section 30007.5 of the Coastal Act provides for the Commission to resolve conflicts between Coastal Act policies as follows:

> The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner that on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

As discussed in Section B: Biological Resources, above, the proposed project is inconsistent with Section 30240 of the Coastal Act because the proposed project will occur in ESHA, and the project is not a resource-dependent use of the ESHA. However, if the Commission denied the development, the slope would remain in its current unstable condition, leading to continued erosion and slope failure and continuing to significantly impact coastal resources, specifically that same ESHA that is located on the failing slope, and thus to inconsistency with Coastal Act policies protecting these resources (Section 30240). In such a situation, when a proposed project is inconsistent with a Chapter 3 policy and denial or modification of the project would also be inconsistent with other Chapter 3 policies, Section 30007.5 of the Coastal Act provides

for resolution of such a policy conflict in a manner that is most protective of coastal resources.

Applying Section 30007.5
The standard of review for the Commission's decision on a coastal development permit in the Commission's retained jurisdiction is whether the proposed project is consistent with the Chapter 3 policies of the Coastal Act. In general, a proposal must be consistent with all relevant policies in order to be approved. If a proposal is inconsistent with one or more policies, it must normally be denied or conditioned to make it consistent with all relevant policies.

However, the Legislature recognized through Sections 30007.5 and 30200(b) that conflicts can occur among those policies. It therefore declared that when the Commission identifies a conflict among the policies of Chapter 3, the conflict is to be resolved "in a manner which on balance is the most protective of significant coastal resources," pursuant to Coastal Act Section 30007.5.

The Commission has traditionally resolved conflicts via Section 30007.5 by analyzing the project according to the following seven steps, each of which is explained in greater detail below:

1) The project, as proposed, is inconsistent with at least one Chapter 3 policy;
2) The project, if denied or modified to eliminate the inconsistency, would affect coastal resources in a manner inconsistent with at least one other Chapter 3 policy that affirmatively requires protection or enhancement of those resources;
3) The project, if approved, would be fully consistent with the policy that affirmatively mandates resource protection or enhancement;
4) The project, if approved, would result in tangible resource enhancement over existing conditions;
5) The benefits of the project are not independently required by some other body of law;
6) The benefits of the project must result from the main purpose of the project, rather than from an ancillary component appended to the project to "create a conflict;" and,
7) There are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies.

1) The project, as proposed, is inconsistent with at least one Chapter 3 policy.

The project as proposed impacts 0.30 acre of Coastal Sage Scrub habitat.

Section 30240 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.

For the Commission to apply Section 30007.5, a proposed project must be inconsistent with an applicable Chapter 3 policy. As discussed in Section B: Biological Resources, above, because the proposed new retaining wall and slope grading would be sited within upland habitat supporting several rare and sensitive plant and wildlife species, the project is located with an environmentally sensitive habitat area but is not consistent with the "allowable use" test of Section 30240(a) of the Coastal Act, which requires that "… only uses dependent on those resources shall be allowed within … [environmentally sensitive habitat] areas." Therefore, the proposed project is inconsistent with the policy in Section 30240 that limits uses in ESHA.

2) The project, if denied or modified to eliminate the inconsistency, would affect coastal resources in a manner inconsistent with at least one other Chapter 3 policy that affirmatively requires protection or enhancement of those resources.

The Commission is mandated to maximize public access (Section 30210) and to protect water quality (Section 30231). As noted above, the existing retaining wall is degraded and requires replacement. Rain and storm events periodically cause failure of the slope and erosion, impacting water quality. Furthermore, in its current erosive condition, the slope presents a public safety hazard. Sediment spilling onto Park Drive hinders traffic and public access to Agua Hedionda Lagoon as Park Drive is the first public road in this location and provides public access parking. Pedestrian access is also affected because City must regularly close the sidewalk to clean up debris.

3) The project, if approved, would be fully consistent with the policy that affirmatively mandates resource protection or enhancement.

For denial of a project to be inconsistent with a Chapter 3 policy, the proposed project would have to protect or enhance the resource values for which the applicable Coastal Act policy includes an affirmative mandate. That is, if denial of a project would conflict with an affirmatively mandated Coastal Act policy, approval of the project would have to conform to that policy. If the Commission were to interpret this conflict resolution provision otherwise, then any proposal, no matter how inconsistent with Chapter 3, that offered a slight incremental improvement over existing conditions could result in a conflict that would allow the use of Section 30007.5. The Commission concludes that the conflict resolution provisions were not intended to apply to such minor incremental improvements.

In this case, the proposed project, if approved as conditioned, would provide safe access to the coast, would improve water quality in the adjacent coastal lagoon by eliminating sedimentation, and, after restoration of the slope with native vegetation, will provide continued habitat value; and, is therefore fully consistent with the mandates maximizing public access and protecting water quality.

4) The project, if approved, would result in tangible resource enhancement over existing conditions.

The proposed project will result in a tangible resource enhancement over existing conditions in three ways. The existing retaining wall needs constant upkeep and the repairs do not actually prevent erosion; whereas the new and improved wall would prevent impacts to water quality by blocking erosion and debris. Second, the debris and the upkeep required to fix it interfere with public access. Lastly, the habitat itself is deteriorating due to the erosion. The project will help protect the coastal sage scrub habitat and the species that rely on it.

5) The benefits of the project are not independently required by some other body of law.

No other law requires the particular benefits of the project; consideration of the Coastal Act and the special conditions are required to adequately protect the resources.

6) The benefits of the project must result from the main purpose of the project, rather than from an ancillary component appended to the project to "create a conflict."

The main purpose of the project is to replace and improve the retaining wall. Thus, the benefits to water quality and to public access are not ancillary and indeed are intertwined with the project's purpose.

7) There are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies.

As explained in the Alternatives Analysis in B. Biological Resources, the City conducted a full alternatives analysis for its Mitigated Negative Determination. The Commission agrees that the proposed project is the least environmentally-damaging alternative that is both feasible and meets the project goals.

H. Local Coastal Planning

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

The Agua Hedionda LUP has been certified by the Commission, but no implementing ordinances have been submitted by the City for the plan segment. Thus, the standard of review for this application is the Chapter 3 policies of the Coastal Act. As conditioned, and resolved, 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.

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 prepared and certified a Mitigated Negative Declaration (MND) on April 5, 2022. Alternatives to the project are discussed in Section B., Biological Resources.

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 biological resources, water quality, and cultural 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

- Final Initial Study/Mitigated Negative Declaration Park Drive Slope and Drainage Improvement Project (February 2022)
- Conceptual Off-Site Mitigation Plan for Coastal Sage Scrub Habitat Impacts for the Park Drive Slope and Drainage Improvement Project at The Crossings at Carlsbad Golf Course by Dudek and as amended on October 7, 2022
- Biological Resources Technical Report by Dudek dated June 2021
- Biological Resources Technical Report by LSA Associates dated July 2018
- Alternatives Analysis Memo from Dudek to City of Carlsbad dated December 19, 2019